

Exhibit U

NOTICE SENT TO:

Smith, Tia
4011 Hubert Avenue
Los Angeles

CA 90008

ORIGINAL FILED

FILE STAMP

JUL 19 2011

**LOS ANGELES
SUPERIOR COURT**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

TIA SMITH

Plaintiff(s),

VS.

MORTGAGE ELECTRONIC REGISTRATION SYSTEM
Defendant(s).

CASE NUMBER

BC465542

**NOTICE OF CASE
MANAGEMENT CONFERENCE**

TO THE PLAINTIFF(S)/ATTORNEY(S) FOR PLAINTIFF(S) OF RECORD:

You are ordered to serve this notice of hearing on all parties/attorneys of record forthwith, and meet and confer with all parties/attorneys of record about the matters to be discussed no later than 30 days before the Case Management Conference.

Your Case Management Conference has been scheduled for November 14, 2011 at 8:30 am in Dept. 50
at 111 North Hill Street, Los Angeles, California 90012.

**NOTICE TO DEFENDANT: THE SETTING OF THE CASE MANAGEMENT CONFERENCE DOES NOT EXEMPT THE
DEFENDANT FROM FILING A RESPONSIVE PLEADING AS REQUIRED BY LAW.**

Pursuant to California Rules of Court, rules 3.720-3.730, a completed Case Management Statement (Judicial Council form # CM-110) must be filed at least 15 calendar days prior to the Case Management Conference. The Case Management Statement may be filed jointly by all parties/attorneys of record or individually by each party/attorney of record. You must be familiar with the case and be fully prepared to participate effectively in the Case Management Conference.

At the Case Management Conference, the Court may make pretrial orders including the following, but not limited to, an order establishing a discovery schedule; an order referring the case to Alternative Dispute Resolution (ADR); an order reclassifying the case; an order setting subsequent conference and the trial date; or other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code, section 68600 et seq.)

Notice is hereby given that if you do not file the Case Management Statement or appear and effectively participate at the Case Management Conference, the Court may impose sanctions pursuant to LASC Local Rule 7.13, Code of Civil Procedure sections 177.5, 575.2, 583.150, 583.360 and 583.410, Government Code Section 68608 (b), and California Rules of Court 2.2 et seq.

JOHN SHEPARD WILEY JR.

Date: July 19, 2011

Judicial Officer

CERTIFICATE OF SERVICE

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Management Conference upon each party or counsel named above:

☒ by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed herein in a separate sealed envelope to each address as shown above with postage thereon fully prepaid.

☐ by personally giving the party notice upon filing the complaint.

Date: July 19, 2011

John A. Clarke, Executive Officer/Clerk

by **TERESA A. BIVINS**, Deputy Clerk

168075

BC 465542

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE
 Case Number _____

THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.30). There is additional information on the reverse side of this form.

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Carolyn B. Kuhl	1	534	Hon. Holly E. Kendig	42	416
Hon. J. Stephen Czuileger	3	224	Hon. Mel Red Recana	45	529
Hon. Luis A. Lavin	13	630	Hon. Debre Katz Weintraub	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
Hon. Richard Fruin	15	307	Hon. Deirdre Hill	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Rex Heeseman	19	311	Hon. Susan Bryant-Deason	52	510
Hon. Kevin C. Brazile	20	310	Hon. John P. Shook	53	513
Hon. Zaven V. Sinanian	23	315	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. Michael Johnson	56	514
Hon. James R. Dunn	26	316	Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. <i>Barbara Scheper</i>	30	400	Hon. David L. Minning	61	632
Hon. Alan S. Rosenfield	31	407	Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Kenneth R. Freeman	64	601
Hon. Charles F. Palmer	33	409	Hon. Mark Mooney	68	617
Hon. Amy D. Hogue	34	408	Hon. Ramona See	69	621
Hon. Daniel Buckley	35	411	Hon. Soussan G. Bruguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwan	72	731
Hon. Joanne O'Donnell	37	413	Hon. Teresa Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Fahey	78	730
Hon. Michael C. Solner	39	415	Hon. Emilie H. Elias*	324	CCW
Hon. Michelle R. Rosenblatt	40	414	other		
Hon. Ronald M. Sohigian	41	417			

***Class Actions**

All class actions are initially assigned to Judge Emilie H. Elias in Department 324 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the Outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on _____ By JOHN A. CLARKE, Executive Officer/Clerk
 Deputy Clerk

INSTRUCTIONS FOR HANDLING UNLIMITED CIVIL CASES

The following critical provisions of the Chapter Seven Rules, as applicable in the Central District, are summarized for your assistance.

APPLICATION

The Chapter Seven Rules were effective January 1, 1994. They apply to all general civil cases.

PRIORITY OVER OTHER RULES

The Chapter Seven Rules shall have priority over all other Local Rules to the extent the others are inconsistent.

CHALLENGE TO ASSIGNED JUDGE

A challenge under Code of Civil Procedure section 170.6 must be made within 15 days after notice of assignment for all purposes to a judge, or if a party has not yet appeared, within 15 days of the first appearance.

TIME STANDARDS

Cases assigned to the Individual Calendaring Court will be subject to processing under the following time standards:

COMPLAINTS: All complaints shall be served within 60 days of filing and proof of service shall be filed within 90 days of filing.

CROSS-COMPLAINTS: Without leave of court first being obtained, no cross-complaint may be filed by any party after their answer is filed. Cross-complaints shall be served within 30 days of the filing date and a proof of service filed within 60 days of the filing date.

A Status Conference will be scheduled by the assigned Independent Calendar Judge no later than 270 days after the filing of the complaint. Counsel must be fully prepared to discuss the following issues: alternative dispute resolution, bifurcation, settlement, trial date, and expert witnesses.

FINAL STATUS CONFERENCE

The Court will require the parties at a status conference not more than 10 days before the trial to have timely filed and served all motions in limine, bifurcation motions, statements of major evidentiary issues, dispositive motions, requested jury instructions, and special jury instructions and special jury verdicts. These matters may be heard and resolved at this conference. At least 5 days before this conference, counsel must also have exchanged lists of exhibits and witnesses and have submitted to the court a brief statement of the case to be read to the jury panel as required by Chapter Eight of the Los Angeles Superior Court Rules.

SANCTIONS

The court will impose appropriate sanctions for the failure or refusal to comply with Chapter Seven Rules, orders made by the Court, and time standards or deadlines established by the Court or by the Chapter Seven Rules. Such sanctions may be on a party or if appropriate on counsel for the party.

This is not a complete delineation of the Chapter Seven Rules, and adherence only to the above provisions is therefore not a guarantee against the imposition of sanctions under Trial Court Delay Reduction. Careful reading and compliance with the actual Chapter Rules is absolutely imperative.

LOS ANGELES SUPERIOR COURT ADR PROGRAMS

CIVIL:

- **Civil Action Mediation** (Governed by Code of Civil Procedure (CCP) sections 1775-1775.15, California Rules of Court, rules 3.850-3.868 and 3.870-3.878, Evidence Code sections 1115-1128, and Los Angeles Superior Court Rules, chapter 12.)
- **Retired Judge Settlement Conference**
- **Neutral Evaluation** (Governed by Los Angeles Superior Court Rules, chapter 12.)
- **Judicial Arbitration** (Governed by Code of Civil Procedure sections 1141.10-1141.31, California Rules of Court, rules 3.810-3.830, and Los Angeles Superior Court Rules, chapter 12.)
- **Eminent Domain Mediation** (Governed by Code of Civil Procedure section 1250.420.)
- **Civil Harassment Mediation**
- **Small Claims Mediation**

FAMILY LAW (non-custody):

- **Mediation**
- **Forensic Certified Public Accountant (CPA) Settlement Conference**
- **Settlement Conference**
- **Nonbinding Arbitration** (Governed by Family Code section 2554.)

PROBATE:

- **Mediation**
- **Settlement Conference**

NEUTRAL SELECTION

Parties may select a mediator, neutral evaluator, or arbitrator from the Court Party Select Panel or may hire someone privately, at their discretion. If the parties utilize the Random Select Mediation or Arbitration Panel, the parties will be assigned on a random basis the name of one neutral who meets the case criteria entered on the court's website.

COURT ADR PANELS

- Party Select Panel** The Party Select Panel consists of mediators, neutral evaluators, and arbitrators who have achieved a specified level of experience in court-connected cases. The parties (collectively) may be charged \$150.00 per hour for the first three hours of hearing time. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Random Select Panel** The Random Select Panel consists of trained mediators, neutral evaluators, and arbitrators who have not yet gained the experience to qualify for the Party Select Panel, as well as experienced neutrals who make themselves available pro bono as a way of supporting the judicial system. It is the policy of the Court that all Random Select Panel volunteer mediators, neutral evaluators, and arbitrators provide three hours hearing time per case. Thereafter, the parties may be charged for additional hearing time on an hourly basis at rates established by the neutral if the parties consent in writing.
- Private Neutral** The market rate for private neutrals can range from \$300-\$1,000 per hour.

ADR ASSISTANCE

For assistance regarding ADR, please contact the ADR clerk at the courthouse in which your case was filed.

Antoniovich	42011 4th St. West	None	Lancaster, CA 93534	(851)974-7275	(851)974-7080
Chatsworth	9425 Penfield Ave.	1200	Chatsworth, CA 91311	(818)576-8566	(818)576-8687
Compton	200 W. Compton Blvd.	1002	Compton, CA 90220	(310)803-3072	(310)223-0337
Glendale	800 E. Broadway	273	Glendale, CA 91208	(818)500-3160	(818)548-5470
Long Beach	415 W. Ocean Blvd.	318	Long Beach, CA 90802	(562)491-8272	(562)437-3802
Norwalk	12720 Norwalk Blvd.	308	Norwalk, CA 90650	(562)807-7243	(562)462-9019
Pasadena	300 E. Walnut St.	109	Pasadena, CA 91101	(626)358-6665	(626)688-1774
Pomona	400 Civic Center Plaza	108	Pomona, CA 91768	(909)820-3183	(909)820-8283
San Pedro	505 S. Centre	209	San Pedro, CA 90731	(310)519-8151	(310)514-0314
Santa Monica	1725 Main St.	203	Santa Monica, CA 90401	(310)280-1828	(310)319-6130
Stanley Mosk	111 N. Hill St.	113	Los Angeles, CA 90012	(213)974-6426	(213)833-5115
Torrance	825 Maple Ave.	100	Torrance, CA 90503	(310)222-1701	(310)782-7328
Van Nuys	6230 Sylmar Ave.	418	Van Nuys, CA 91401	(818)374-2337	(818)902-2440

Partially Funded by the Los Angeles County Dispute Resolution Program

A complete list of the County Dispute Resolution Programs is available online and upon request in the Clerk's Office

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at www.lasuperiorcourt.org (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (Civil only).

What is ADR:

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

Mediation:

In mediation, a neutral person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate

Mediation may be particularly useful when parties have a dispute between or among family members, neighbors, or business partners. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate

Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Arbitration:

In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. *Nonbinding arbitration* means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate

Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate

If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Neutral Evaluation:

In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate

Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate

Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences:

Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

**SUMMONS
 (CITACION JUDICIAL)**

NOTICE TO DEFENDANT: AMERICAN MORTGAGE NETWORK, INC.,
(AVISO AL DEMANDADO): RESIDENTIAL FUNDING COMPANY, WALMAR
 FINANCIAL GROUP, AURORA BANK, FSB,
 CALWESTERN RECONVEYANCE CORPORATION, HOMECOMING
 FINANCIAL, GMAC, RESIDENTIAL ACCREDIT LOANS INC, DEUTSCHE
 BANK TRUST COMPANY AMERICAS AS INDENTURED TRUSTEE FOR RALI 2007-001,
 YOU ARE BEING SUED BY PLAINTIFF: FIRST AMERICAN TITLE INSURANCE
(LO ESTÁ DEMANDANDO EL DEMANDANTE): COMPANY AND DES FLYING

**TIA SMITH,
 PLAINTIFF**

**FOR COURT USE ONLY
 (SOLO PARA USO DE LA CORTE)**

**CONFORMED COPY
 ORIGINAL FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES**
 AUG 22 2011
 John A. Clarke, Executive Clerk
 Mary Flores, Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: **STANLEY MOSK**
 (El nombre y dirección de la corte es):

LOS ANGELES SUPERIOR COURT

111 NORTH HILL STREET, LOS ANGELES, CALIFORNIA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

TIA SMITH, in pro per, 4011 HUBERT AVENUE, LOS ANGELES, CALIFORNIA 90008 (323) 384-4493

DATE: **AUGUST 22, 2011**
 (Fecha) **JOHN A. CLARKE, CLERK**

(Secretario)

Mary Flores

Deputy
 (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

- | | |
|--|---|
| under: <input type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

- ☐ by personal delivery on (date):

(SEAL)

168075

1 TIA SMITH
2 4011 Hubert Avenue
3 Los Angeles, CA 90008
4 (323) 384-4493
5 FAX (323) 295-0517

6 Plaintiff, In Pro Per

CONFORMED COPY
ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

08 22 2011

CLERK: Mary Flores
Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9
10 TIA SMITH

11 Plaintiff,

12 vs.

13 **AMERICAN MORTGAGE NETWORK,**
14 **INC., RESIDENTIAL FUNDING**
15 **COMPANY, WALMAR FINANCIAL**
16 **GROUP, AURORA BANK FSB, CAL-**
17 **WESTERN RECONVEYANCE**
18 **CORPORATION, HOMECOMINGS**
19 **FINANCIAL, GMAC, RESIDENTIAL**
20 **ACCREDIT LOANS, INC., DEUTSCHE**
21 **BANK TRUST COMPANY AMERICAS**
22 **as INDENTURED TRUSTEE for RALI**
23 **2007-Q01, FIRST AMERICAN TITLE**
24 **INSURANCE COMPANY AND**
25 **DOES 1-20, inclusive**

26 Defendants.

Case No.: BC465542
Assigned to Dept: 50

AMENDED VERIFIED COMPLAINT
FOR DECLARATORY RELIEF AND
INJUNCTIVE RELIEF FOR
ENFORCEMENT OF RESCISSION AND
CANCELLATION OF FORECLOSURE :

1. VIOLATION OF TILA;
2. VIOLATION OF CALIFORNIA MORTGAGE LENDING ACT, CALIFORNIA FINANCIAL CODE SECTION 50000;
3. VIOLATION OF CALIFORNIA CIVIL CODE SECTION 1916.7 (10);
4. VIOLATION OF EQUAL CREDIT OPPORTUNITY ACT;
5. VIOLATION OF RESPA;
6. VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200;
7. VIOLATION OF CA CIV. CODE §1572;
8. INTENTIONAL MISREPRESENTATION;
9. FRAUDULENT CONCEALMENT;
10. NEGLIGENT MISREPRESENTATION;
11. BREACH OF CONTRACT;
12. BREACH OF IMPLIED COVENANT OF GOOD AND FAIR DEALING;
13. BREACH OF FIDUCIARY DUTY;
14. FRAUDULENT OMISSIONS;

27 **RECEIVED**

28 **OCT 3 2011**

By: MPLS SOP DEPT

(via Inter Office Mail from)
FTW Pitney Bowes

- 1
 - 2
 - 3
 - 4
 - 5
 - 6
 - 7
 - 8
 - 9
 - 10
 - 11
 - 12
 - 13
 - 14
 - 15
 - 16
 - 17
 - 18
 - 19
 - 20
 - 21
 - 22
 - 23
 - 24
 - 25
 - 26
 - 27
 - 28
- 15. UNCONSCIONABILITY;
 - 16. RESCISSION;
 - 17. NEGLIGENCE (FIRST AMERICAN);
 - 18. BREACH OF FIDUCIARY DUTY (FIRST AMERICAN);
 - 19. VIOLATION OF CALIFORNIA CIVIL CODE SECTION 2923.5;
 - 20. VIOLATION OF CALIFORNIA CIVIL CODE SECTION 2923.6;
 - 21. DECEPTIVE BUSINESS PRACTICES;
 - 22. NEGLIGENCE;
 - 23. SLANDER OF TITLE;
 - 24. TRESPASS ON CONTRACT;
 - 25. WRONGFUL CONVERSION OF REAL PROPERTY;
 - 26. WRONGFUL FORECLOSURE;
 - 27. VIOLATION OF CALIFORNIA CODE § 1788.17;
 - 28. INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS;
 - 29. UNJUST ENRICHMENT;
 - 30. INJUNCTIVE RELIEF;
 - 31. QUIET TITLE

COMES NOW, Plaintiff, TIA SMITH in this court of record and for causes of action against the above-named Defendants, in this matter before the Bench, it becomes placidly clear that several fatal errors and deceptive actions have occurred throughout the life of the Subject Loan process causing a cloud on Plaintiff's title resulting from ineffective non-judicial foreclosure proceedings, misconduct and malfeasance. Plaintiff hereby complains and alleges as follows:

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction based upon federal question under 20
3 U.S.C. Section 1331 and 1367, 18 U.S.C. Section 1964 (c) and 15 U.S.C. Section
4 1640(e). This is an action asserting violations of federal statutes commonly known
5 as TILA, RESPA with additional claims under California law. These claims all
6 arise out of the same controversy and sequence of events

7 2. Venue is proper in this Court pursuant to 28 U.S.C. Section 1391(b) (2) because
8 all, or a substantial part, of the events giving rise to the claims asserted herein
9 occurred in this judicial district.

10 3. This Court has personal jurisdiction over the parties because all of the
11 Defendants engage in business within the State of California, County of Los
12 Angeles, and thus have sufficient contacts.

13 4. Jurisdiction of this Court for the pendent State claims is authorized by Federal
14 Rule of Civil Procedure, Rule 18(a).

15 5. The term "TILA" means the Truth in Lending Act, 15 U.S. C. Sections 1601-
16 1666j, as amended. TILA, which took effect on July 1, 1969, is intended to
17 promote the informed use of consumer credit by requiring creditors to disclose
18 credit terms and costs, requiring additional disclosures for loans secured by
19 consumer's homes, and permitting consumers to rescind certain transactions that
20 involve their principal dwellings.

21 6. The terms "amount financed," "annual percentage rate," "consumer," "consumer
22 credit," "consummation," "credit," "creditor," "dwelling," "finance charge,"
23 "mortgage," "open-end credit," "payment schedule," "points and fees," "residential
24 mortgage transaction," "reverse mortgage transaction," "security interest," and
25 "total of payment" are defined as set forth in Sections 103 and 128 of TILA, 15
26 U.S.C. Sections 1602 and 1638, and
27 Sections 226.2, 226.4, 226.18, 226.22, 226.32, and 226.33 of Regulation Z, 12
28 C.F.R. Sections 226.2, 226.4, 226.18, 226.22, 226.32 and 226.33.

7. The term "Regulation Z" means the regulation the FRB promulgated to
implement TILA and HOEPA, 12 C.F.R. 226, as amended. The term also includes
the FRB Official Staff Commentary on Regulation Z, 12 C.F.R. 226, Supp. 1, as
amended.

1 8. In the course of offering and extending credit to consumers, Defendants have
2 failed to provide material information required to be disclosed by TILA; included
3 loan terms prohibited by TILA, and engaged in unfair or deceptive acts or
4 practices.

5 INTRODUCTION

6 9. On December 2, 2006, Plaintiff executed a note, a deed of trust and other
7 related documents to borrow \$556,000.00, secured by the subject property
8 (hereinafter the "Subject Loan"). Plaintiff also executed a Second Promissory Note
9 and a Second deed of trust (hereinafter "HELOC") as security interest on the
10 Subject Property. At closing, Plaintiff signed a "First Deed of Trust", First
11 Promissory Note, "Second Deed of Trust" and a Second Promissory Note naming
12 AMERICAN MORTGAGE NETWORK, INC. ("AMN") as the lender, and that
13 Notes were separated from the deeds of trust after the execution by Plaintiff of
14 those documents, with the Notes being transferred to investors whose money had
15 funded the loan taken out by the Plaintiff/Trustor. AURORA BANK FSB f/k/a
16 AURORA LOAN SERVICES, LLC ("AURORA") furnished none of the funding
17 for the subject loan but, have trespassed on Plaintiffs' property with illegal
18 foreclosure action. Simultaneously with or immediately after the loan was taken
19 out by the Plaintiff, the obligation reflected by the Note was satisfied by monies
20 provided by the investors who then would have obtained ownership of and right to
21 payment under the terms of the "First" Note. These investors are the only parties
22 to whom an obligation arose after the loan was securitized, and are the only proper
23 parties to later declare a default and to have a right to direct a sale if the Plaintiff
24 did not make payments as required under the terms of the Note.
25
26
27
28

1 10. The Note that had been executed with the Deed of Trust by the Plaintiff was
2 separated from the Deed of Trust in that the note became part of a pool of
3 mortgages and lost its individual identity as a Note between a lender and borrower,
4 but instead merged with the other Notes as a total obligation due to the investors.

5 11. Mortgage Electronic Registration Systems, Inc. (hereinafter "MERS") was
6 created in relation to the MERS system with the specific intent that MERS would
7 be named the beneficiary and/or as the nominee of the lender on the Deed of Trust
8 which Plaintiff was induced into signing. However, MERS was not a nominee for
9 the lender, because the lender was an investor who had provided the funds for the
10 loan. This fact was known to MERS and the purported lender and the subsequent
11 assignee of any and all rights purported to have been assigned by MERS at the
12 time the Note and Deed of Trust was signed by the Plaintiff and at the time of each
13 and every such later purported assignment by MERS of any interest in the Note
14 and Deed of Trust.
15

16
17 12. The foreclosure complained of herein was initiated against Plaintiff by
18 parties who have and had no standing to commence or maintain any foreclosure
19 proceeding, both by the express language of the Deed of Trust which required that
20 the beneficiary/party owed the obligation declare the default and direct the sale,
21 and by the laws governing the commencement and advancement of foreclosure
22 proceedings which require the trust beneficiary to declare such default and direct
23 such sale, and the fact that the foreclosure was automatically invalidated by the
24 collection and acceptance of forbearance payments for a loan modification amidst
25 the foreclosure proceeding. CAL-WESTERN is a complete stranger to the
26 purported loan transaction and AURORA did not fund the loan with any of its own
27 assets and are not owed any of the funds to be repaid by Plaintiff, and do not stand
28

1 to suffer any loss should they be enjoined from having to rescind the invalid
2 foreclosure on Plaintiffs' home.

3
4 13. The foreclosure on Plaintiffs' home complained of herein was initiated by
5 Defendants who had and have no lawful right to initiate, advance or maintain any
6 foreclosure action against her.

7
8 14. All Defendants knew or should have known that prior to the time that the
9 loan was taken out by Plaintiff which is at issue herein, was that the loan which
10 named MERS on the Deed of Trust was securitized or intended to be securitized
11 prior to the preparation of the Note and Deed of Trust reflecting the loan.
12 Defendants also knew or should have known that the scheme employed by their
13 predecessors involved in the origination, aggregation and securitization of
14 mortgage-backed loans originated from 2003 through 2008 and secured by real
15 property in the United States originated from 2003 through 2008 included financial
16 incentives which were designed to result in loans being written on terms which
17 were likely or certain to result in foreclosure, and that the scheme described herein
18 included financial incentives designed to motivate appraisers, mortgage brokers,
19 lenders, aggregator banks and securitizing banks to steer borrowers into loans they
20 could not afford and could not repay so that the loans would go into default and the
21 Defendants involved in servicing, aggregating and securitizing those loans could
22 make yet more profits from default, foreclosure and selling the properties after
23 foreclosure.
24

25
26 15. The financial incentives mentioned in the previous paragraph included
27 without limitation the hiring of appraisers who had financial incentive to appraise
28 properties at a value that would justify the loan requested, the payment to mortgage

1 brokers of higher fees for sub-prime and sub-prime loans than for prime loans and
2 the use of novel and unprecedented underwriting criteria such as stated income and
3 100% or more financing of the purchase price and the purchase of loans from
4 lenders by aggregators and servicers of loans at more than face value if the loans
5 were sub-prime or sub-prime and in particular if such loans also included an
6 adjustable interest rate and/or a pre-payment penalty. In the case of Plaintiff, the
7 loan was advanced based upon stated income. Also, in this case, it appears that the
8 equity in the home was used to secure a larger loan based upon the value of the
9 home when it was exaggerated by the market manipulated by the Defendants.

10
11 16. The Plaintiff has a Deed of Trust that states that the beneficiary and/or
12 beneficiary as the nominee of the lender is MERS, and the Plaintiff has been
13 declared in default by a party not entitled to declare the default. A party, with no
14 part of Plaintiff's contract, caused a Trustee with no standing, capacity or authority
15 to notice the obligor of the default and intent to sell under California law.

16
17 17. MERS does not have standing merely because it is the alleged beneficiary
18 under the Deed of Trust. It is not a beneficiary and, in any event, the mere fact that
19 an entity is a named beneficiary of a Deed of Trust is insufficient to enforce the
20 obligation. Since the Deed of Trust attempts to name MERS as both a beneficiary
21 and a nominee, MERS is not a true beneficiary with the rights to foreclose. The
22 Deed of Trust states as follows:

23
24 "MERS is a separate corporation that is acting solely as a nominee for
25 Lender and Lender's successors and assigns. MERS is the beneficiary under this
26 Security Instrument". And later it says "The beneficiary of this Security
27 Instrument is MERS (solely as nominee for Lender and Lenders successors and
28 assigns) and the successors and assigns of MERS".

1
2 18. However, the terms and conditions given to the members of MERS contradicted
3 the beneficiary status, MERS Terms and conditions: "MERS shall serve as
4 mortgagee of record with respect to all such mortgage loans solely as a nominee, in
5 an administrative capacity, for the beneficial owner or owners thereof from time to
6 time. MERS shall have no rights whatsoever to any payments made on account of
7 such mortgage loans, to any servicing rights related to such mortgage loans, or to
8 any mortgaged properties securing such mortgage loans. MERS agrees not to
9 assert any rights (other than rights specified in the Governing Documents) with
10 respect to such mortgage loans or mortgaged properties. References herein to
11 "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and
12 beneficiary under a Deed of Trust and any other form of security instrument under
13 applicable State law."
14

15 19. AURORA's predecessor's use of MERS created the method to defraud the
16 Trustor because MERS was not the holder of the Note and MERS was not a
17 transferee in possession who was entitled to the rights of a holder or had authority
18 under State law to act for the holder.
19

20
21 20. The entities that have given notice of foreclosure on the home of the Plaintiff
22 are not MERS and are not the Trustee named on the Deed of Trust and are not the
23 parties that funded the loan of the Plaintiff.
24

25 21. Per the Los Angeles County Recorder of Deeds there was an assignment
26 executed by Theodore Schultz (alleged robo-signer), as Vice-President of MERS,
27 also known as Vice-President of AURORA, recorded on December 31, 2009,
28 assigning its beneficial rights to AURORA, but MERS was not a true beneficiary.

1
2 22. Theodore Schultz has no authority to sign for MERS and MERS cannot
3 assign or execute any document within the chain of title.

4 23. MERS is defunct, had no standing and no authority to assign interest in the
5 Deed of Trust. Per the deposition of Mr. Huffman of MERS, MERS has no
6 employees, which means the assignment of the Deed of Trust signed by Theodore
7 Schultz in favor of AURORA is a fraud and a forgery and Theodore Schultz has
8 violated California Penal Code 115.5. (Exhibit "E").

9
10 24. THE ALLEGED TRUSTEE, CAL-WESTERN HAD NO AUTHORITY OR
11 CAPACITY TO EXECUTE THE NOTICE OF DEFAULT ON September 24,
12 2009.

13
14 25. Due to the LATE, DEFECTIVE, FAULTY, and FRAUDULENT
15 Substitution of Trustee to CAL-WESTERN, there is no validity of Substitution of
16 Trustee, which voids the Notice of Default. The Deed of Trust expressly reserves
17 the right to the Lender to cause the Trustee to execute written notice of the
18 occurrence of an event of default and of Lenders' election to cause the Property to
19 be sold. The Deed of Trust further provides that the Trustee shall give public
20 notice of sale to the persons and in the manner prescribed by applicable law.
21 These express provisions of the Deed of Trust are impossible to comply with
22 amidst the fraud.

23
24
25 26. Plaintiff acquired fee simple title by Quitclaim Deed recorded December 2,
26 2006 as Instrument No. 20062729009 (Exhibit #A).

1 27. On or about December 2, 2006, Plaintiff executed a Deed of Trust ("DOT"), a
2 true and correct copy of which is attached hereto as Exhibit "B", which was
3 recorded on December 8, 2006 as Instrument No. 20062729009 of the Official
4 Records in the office of the Recorder of Los Angeles County, California, naming
5 AMERICAN MORTGAGE NETWORK, INC., ("AMN") as the Lender, FIRST
6 AMERICAN TITLE INSURANCE COMPANY ("FIRST AMERICAN") as the
7 original Trustee and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
8 INC. ("MERS"), was the original beneficiary for the amount of \$556,000.00.

9
10 28. The Deed of Trust was secured by the real property located at 4011 Hubert
11 Avenue, Los Angeles, California 90008, APN: 5033-016-023 (the "Property").
12

13 29. On September 24, 2009, Cal-Western recorded a Notice of Default, Exhibit
14 "C", claiming that Plaintiff was in default for her monthly obligation under the
15 Promissory Note and Deed of Trust that provided security for the loan alleged
16 above and on December 30, 2010 Defendants MERS and CAL-WESTERN caused
17 to record a Notice of Trustee's Sale with the Los Angeles County Recorder's
18 office. (Exhibit "D")
19

20
21 30. What Plaintiff finds to be very particular is that the Notice of Default was
22 recorded September 24, 2009, but neither of the Defendants had power or authority
23 to do so. The Substitution of Trustee was not recorded until November 9, 2009
24 with the County Recorder, a true and correct copy is attached hereto as Exhibit
25 "E", naming CAL-WESTERN as the new Trustee under the Deed of Trust. Again,
26 what Plaintiff finds to be very suspicious is that the Notice of Default and
27 Substitution of Trustee previously recorded are void on their faces because the
28 Corporate Assignment of Deed of Trust was not recorded until December 31, 2009

1 with the County Recorder, a true copy is attached hereto as Exhibit E. Defendants
2 had no authority, no capacity, no legal ability to record the Notice of Default
3 UNTIL there was beneficial interest established in the Deed of Trust by
4 RECORDING the Corporate Assignment of the Deed of Trust, as mandated by
5 California Civil Code and a strict provision of the deed of trust to invoke
6 foreclosure.

7
8 31. Plaintiff is informed and believes and therefore alleges that the foreclosure is
9 void and that the Trustee's Sale and Notice of Default must be rescinded
10 accordingly. The Notice of Default was invoked by an interloper lacking authority
11 or capacity and to allow Defendants to proceed with these criminal actions is a
12 violation of Plaintiff's due process and civil rights as allowed by the Constitution.
13

14 32. Plaintiff further alleges on information and belief that the alleged beneficiary
15 on the Deed of Trust cannot prove that they are in fact the party authorized to
16 conduct the impending foreclosure sale.
17

18
19 33. Plaintiff further alleges that the foreclosure sale of the Subject Property
20 cannot be executed in accordance with the requirements of *California Civil Code*
21 *Sections 1624, 2924 et seq.*
22

23 34. That the Trustee who is acting as the agent of the beneficiary did not have
24 the power to act as agent for a beneficiary that did NOT have beneficial interest in
25 the subject Note, Deed of Trust or Property. CAL-WESTERN did not have the
26 power or authority to act as much as Plaintiff's next door neighbor had to act.
27 They were not a party to the contract and were not substituted correctly as
28

1 mandated by the provisions of the Deed of Trust and underlying California Civil
2 Code.

3
4 35. That the notices and foreclosure failed to conform with the provisions of
5 *California Civil Code Sections 1624, 2932.5 et seq.*, and *Commercial Code section*
6 *3302 et seq.*

7
8 36. Plaintiff further alleges that *Cal. Civ. Code section 2924* and its subparts are
9 being applied to Plaintiff in a manner that is unlawful, because at least in part the
10 party acting as the Trustee proceeding with the foreclosure of Plaintiff's Subject
11 Property notwithstanding the following facts and circumstances:

12 a. Alleged foreclosing beneficiary has no beneficial interest in the
13 deed of trust and cannot legally conduct a foreclosure, a serious
14 trespass on Deed of Trust paragraph 22 and *California Civil Code*
15 *Sections 2932, 2932.5;*

16
17
18 b. Plaintiff has proof that the Trustee did not have power of sale to
19 execute or record the Notice of Default per public records, the
20 Substitution of Trustee was recorded November 9, 2009 which was
21 SUBSEQUENT to the Notice of Default recorded September 24,
22 2009, and as such the current foreclosure of Plaintiff's subject
23 property has not conformed with the strict mandates of the Deed of
24 Trust nor *Civil Code section* and CAL-WESTERN has trespassed on
25 Plaintiff's property and on the Deed of Trust per paragraph 24.
26
27
28

1 c. Note, there can be no valid assignment from the original Lender
2 on the deed of trust, MORTGAGE ELECTRONIC REGISTRATION
3 SYSTEMS, INC. ("MERS") who has purported to assign the current
4 beneficial interest forthwith, which is fraud, extortion and trespass.

5 d. Note that the assignment of record is void, due to fraud and the
6 toxicity of MERS as nominee and beneficiary. MERS as nominee
7 cannot execute a valid assignment. Note when it was assigned to the
8 current beneficiary, it did not convey the power of sale because it
9 violated the terms of *California Civil Code section 2932.5*, that the
10 assignment when it was made to the current alleged beneficiary that
11 the Note executed by Plaintiff was no longer a negotiable instrument
12 because the assignment could not have physically applied to the Note.
13

14 37. California Civil Code does not apply to the strict provisions of the private
15 contract between the Plaintiffs and the true Lender. The alleged beneficiary has
16 filed false documents to purport standing and perpetration of the successor lender,
17 but cannot by virtue of invalid documents.
18

19 38. That by virtue of the method and manner of Defendants carrying out the
20 trespass and violations of the Deed of Trust, they cannot prove that such provisions
21 have been complied with and the foreclosure is void on its face, causing a cloud on
22 Plaintiff's title.
23

24 39. This is an also action for violations of California's Unfair Competition Law
25 (the "UCL"), Business & Professions Code §§ 17200, *et seq.*, and common law
26 fraud. Plaintiff brings this action against Defendants, RFC, AMN and DOE
27 Defendants who originated the Option Adjustable Rate Mortgage ("Option ARM")
28 loan that failed to clearly, unambiguously and conspicuously disclose to Plaintiff

1 the following: (i) the low interest rate set forth in the Option ARM mortgage notes
2 ("Notes") was only available for thirty days, if at all; (ii) the monthly payment
3 amounts for the first three to five years provided to Plaintiff on a Truth-In-Lending
4 Disclosure Statement ("TILDS") were insufficient to pay both accrued interest and
5 principal; (iii) negative amortization was absolutely certain to occur if Plaintiff
6 made payments according to the schedule of monthly payments provided in the
7 TILDS; and that (iv) loss of equity and/or loss of Plaintiff's residence was certain
8 to occur if Plaintiff made payments according to the payment schedule.

9 40. As alleged below, without the active participation of Defendants, AMN would
10 not have been able to issue the Option ARM loan to Plaintiff. Despite serving as a
11 loan originator, AMN did not use its own assets to fund the Option ARM loan.
12 Instead, it borrowed money from warehouse lenders (which oftentimes were
13 affiliates of Defendants) to fund the loan at closing and then sold the loan to
14 Defendants shortly after closing. The funds paid by Defendants to purchase the
15 loan was then paid to the warehouse lenders, with the remainder going to AMN.
16 Because AMN's business was wholly dependent on Defendants purchasing the
17 loan shortly after origination, AMN did not have, or utilize, any discretion in the
18 origination of the Option ARM loan. Instead, it was required to, and did, use loan
19 documents and underwriting guidelines designed and approved by Defendants.
20 Thus, Defendants are liable both directly, and as aiders and abettors, for the
21 damages caused by the deceptive loan documents at issue in this action.

22 THE PARTIES

23 41. Plaintiff, Tia Smith is, and at all relevant times was, an individual residing at
24 4011 Hubert Avenue, Los Angeles, California 90008. On or about December 2,
25 2006, Plaintiff refinanced her existing home loan and entered into an Option ARM
26 loan agreement with AMN. The Option ARM loan was secured by Plaintiff's
27 residence. Attached hereto as Exhibit 1 are true and correct copies of the Note and
28 TILDS (collectively, the "Loan Documents") for Plaintiff's loan. In or about
December, 2006, AMN sold Plaintiff's Option ARM loan to Residential Funding
Company, LLC ("RFC").

42. At all times mentioned herein, Defendants were engaged in the business of
selling, securitizing, and/or owning, and/or are or were the assignees of, the Option
ARM loan that is the subject of this Complaint, throughout the United States,
including in this District.

1 43. Plaintiff is informed, believes and thereon alleges that each of the
2 aforementioned Defendants are responsible in some manner, either by act or
3 omission, strict liability, fraud, deceit, fraudulent concealment, negligence,
4 respondeat superior, breach of contract or otherwise, for the occurrences herein
5 alleged, and that Plaintiff's injuries, as herein alleged, were proximately caused by
6 the conduct of Defendants.

7 44. Plaintiff is informed, believes and thereon alleges, that at all times material
8 hereto and mentioned herein, each of the Defendants sued herein was the agent,
9 servant, employer, joint venturer, partner, division, owner, subsidiary, alias, aider
10 and abettor, assignee and/or alter-ego of each of the remaining Defendants and was
11 at all times acting within the purpose and scope of such agency, servitude, joint
12 venture, division, ownership, subsidiary, alias, assignment, alter-ego, partnership
13 or employment and with the authority, consent, approval and ratification of each
14 remaining Defendant.

15 45. Plaintiff is informed, believes, and thereon alleges that at all times herein
16 mentioned, each Defendant was acting in concert or participation with each other,
17 and/or aided and abetted the other Defendants, and/or was a joint participant and
18 collaborator in the acts complained of, and /or was the agent or employee of the
19 others in doing the acts complained of herein, each and all of them acting within
20 the course and scope of said agency and/or employment by the others, each and all
21 of them acting in concert one with the other and all together. Each Defendant was
22 the co-conspirator, aider and abettor, agent, servant, employee, assignee and/or
23 joint venturer of each of the other Defendants and was acting within the course and
24 scope of said conspiracy, agency, employment, assignment and/or joint venture
25 and with the permission and consent of each of the other Defendants.

26 46. Pursuant to California Civil Code § 1459 and California Code of Civil
27 Procedure § 368, Defendants AMN, MERS, RFC, GMAC, HOMECOMINGS,
28 AURORA, RALI TRUST, DEUTSCHE and DOES 1-20 are the subsequent
purchasers and/or assignees of Plaintiff's' Option ARM loan. At all relevant times,
Defendants are and/or were sophisticated and knowledgeable entities whose
businesses included designing, purchasing, packaging, securitizing and selling
interests in the subject Option ARM loan. Defendants purchased, packaged,
directed, securitized and/or sold the subject Option ARM loan with full knowledge
of the failures to disclose and material omissions as alleged herein. Defendants
therefore "stand in the shoes" of the assignor, taking their rights and remedies,
subject to any defenses that the obligor (Plaintiff) has against the assignor prior to
notice of the assignment.

1 47. At all relevant times, Plaintiff has been a resident of the County of Los
2 Angeles, State of California.

3 48. By Law and precedent and in accordance with the Supreme Court of the
4 United States, pro se Pleadings MAY NOT be held to the same standard as a
5 lawyer's and/or attorney's; and whose motions, pleadings and all papers may
6 ONLY be judged by their function and never their form. See: Haines v. Kerner;
7 Platsky v. CIA; Anastasoff v. United States; Litigants are to be held to less
8 stringent pleading standards;
9

10 See: Haines v. Kerner, 404 U.S. 519-421; In re Haines: pro se litigants are
11 held to less stringent pleading standards than admitted or licensed bar attorneys.
12 Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the
13 opportunity to submit evidence in support of their claims.

14 See also: Platsky v. C.I.A., 953 f.2d. 25; In re Platsky: court errs if court
15 dismisses the pro se litigant without instruction of how pleadings are deficient and
16 how to repair pleadings.

17 See also: Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000); In re
18 Anastasoff: litigants' constitutional (guaranteed) rights are violated when courts
19 depart from precedent where parties are similarly situated.
20

21 49. Defendant WALMAR FINANCIAL GROUP, INC., ("WALMAR") Plaintiff is
22 informed and believes, and on this basis alleges, that WALMAR no longer has a
23 valid real estate license with the DRE. Plaintiff has no knowledge whether
24 WALMAR currently transacts any business in California.
25

26 50. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS,
27 INC., ("MERS"), IS A Delaware business and has its principal place of business at
28

1 1818 Library Street, Suite 300, Reston, Virginia 20190. MERS was created in or
2 about 1998 by conspirators from the largest banks in the United States in order to
3 undermine and eventually eviscerate long-standing principles of real property law,
4 such as the requirement that any person or entity who seeks to foreclose upon a
5 parcel of real property: 1) be in possession of the original note, 2) Have a publicly
6 recorded mortgage in the name of the party for whom the underlying debt is
7 actually owed and who is the holder of the original Promissory Note with legally
8 binding assignments, and 3) possess a written assignment giving he, she or it actual
9 rights to the payments due from the borrower pursuant to both the mortgage and
10 note. MERS, is owned by the company, MERSCORP, which is in turn owned
11 by a group of Wall Street investment Banks

12
13 51. Defendant AURORA BANK FSB f/k/a AURORA LOAN SERVICES LLC
14 ("AURORA") is a foreign corporation organized and existing under the laws of the
15 State of Delaware. Aurora has been assigned as the servicer of the Subject Loan. It
16 is further alleged that AURORA has been assigned an interest in the loan greater
17 than that of a typical servicer, although AURORA's full interest in the Subject Loan is
18 not entirely known at this time. AURORA's principal office is located at 10350
19 Park Meadows Drive, Littleton, Colorado 80124. AURORA's agent for service of
20 process is Corporation Service Company which does business in California as CSC
21 Lawyers Incorporating Service, (C1592199).

22
23 52 .Defendant CAL-WESTERN RECONVEYANCE CORPORATION, is and
24 was at all times herein mentioned conducting business in California, as a National
25 Association, and claims to be duly appointed Trustee, under the Deed of Trust
26 executed by Plaintiff, Tia Smith, and is conducting intrastate business in the State
27 of California.
28

1
2 53. Defendant, DEUTSCHE BANK TRUST COMPANY AMERICAS
3 (hereinafter "DEUTSCHE") is a national banking association organized under the
4 laws of the United States and is engaged in the residential mortgage business in
5 this state with its principal executive offices located at: 60 Wall Street, New York,
6 New York 10005. DEUTSCHE may be served as follows: Deutsche Bank Trust
7 Company Americas, Attn: President, 60 Wall Street, New York, New York 10005.
8 Plaintiff is informed, believes and thereon alleges, that DEUTSCHE is the trustee
9 and custodian under the pooling and servicing agreement of the RALI TRUST and
10 that DEUTSCHE is responsible for holding the notes and mortgage files on behalf
11 of the RALI TRUST which means that it is charged with the responsibility of
12 properly funding and transferring the loan into the trust and administering the trust
13 properly; as a "Servicer" and as the "exchange agent" when the notes are traded
14 out on the trusts. DEUTSCHE has been named in this action in its capacity as the
15 trustee of the RALI TRUST.

16
17 54. Defendant RESIDENTIAL FUNDING COMPANY, LLC is a Delaware
18 limited liability company with its principal place of business in Minneapolis,
19 Minnesota. Prior to approximately October 2006, Residential Funding Company,
20 LLC operated as Residential Funding Corporation, a Delaware corporation with its
21 Residential Funding was the Sponsor for the securitization at issue in this action.
22 As Sponsor of the securitizations at issue, Residential Funding either originated the
23 underlying mortgage loans through its wholly owned subsidiary, Homecomings
24 Financial, LLC, formerly Homecomings Financial Network, Inc.
25 ("HOMECOMINGS"), or purchased them from other originators principal place of
26 business in Minneapolis, Minnesota. Residential Funding Company, LLC and its
27 predecessor, Residential Funding Corporation, are referred to herein as ("RFC").
28

1 55. Defendant, RESIDENTIAL ACCREDIT LOANS, INC. SERIES 2007-

2 Q01TRUST (hereinafter "RALI TRUST") and is a New York common law trust
3 engaged in the residential mortgage business in this state with its business address
4 at 8400 Normandale Lake Boulevard, Suite 250, Minneapolis, Minnesota 55437.

5 RALI TRUST may be served as follows: Residential Accredit Loans, Inc. Series
6 2007-Q01 Trust, c/o Deutsche Bank Trust Company Americas, 1761 East Street,
7 Santa Ana, California 92705-4934. Residential Accredit Loans, Inc. ("RALI") is a
8 Delaware corporation with its principal place of business 8400 Normandale Lake
9 Boulevard, Suite 250, Minneapolis, Minnesota 55437. Residential Accredited
10 Loans, Inc. ("RALI"), a subsidiary of Residential Capital, LLC f/k/a Residential
11 Capital Corporation ("RCC") Residential Capital, LLC, which owns indirectly
all of the equity of both Homecomings and GMACM, has restructured the
operations of Homecomings and GMACM.

12
13 56. Defendant, AMERICAN MORTGAGE NETWORK, INC. ("AMN") a
14 subsidiary of Well Fargo Bank, N.A. operates as a mortgage bank in the United
15 States. It underwrites and funds home loan programs, including fixed, adjustable,
16 stated income, interest only, jumbo, ALT-A, home equity, and first-time buyer
17 options, as well as sells these loans on a servicing-released basis to institutional
18 purchasers. The company was founded in 1997 and is headquartered in San Diego,
19 California with additional offices in Arizona, California, Colorado, Connecticut,
20 Florida, Georgia, Illinois, Minnesota, Kansas, Utah, Massachusetts, New Jersey,
21 New York, North Carolina, Oregon, Rhode Island, Texas, Virginia, and
22 Washington. American Mortgage Network, Inc. is a subsidiary of Wells Fargo
23 Bank, National Association.

24
25 57. Defendant, HOMECOMINGS FINANCIAL, LLC (hereinafter
26 "HOMECOMINGS"), is a Delaware limited liability company engaged in the
27 business of consumer mortgage lending in this state with its principal place of
28 business located at: 8400 Normandale Lake Boulevard, Suite 250, Minneapolis,

1 Minnesota 55437-1059. HOMECOMINGS may be served as follows:

2 Homecomings Financial, LLC, c/o Corporation Service Company, 2730 Gateway
3 Oaks Drive, Suite 100, Sacramento, California 95833-3503. At all relevant times
4 alleged in this Complaint HOMECOMINGS regularly extended consumer credit
5 payable by written agreement in more than four installments or for which a finance
6 charge is imposed. Plaintiff is informed, believes and thereon alleges, that
7 HOMECOMINGS is a "creditor" within the meaning of the TILA, 15 U.S.C. §
8 1602(f) and Regulation Z § 226.2(a)(17). At all relevant times alleged in this
9 Complaint, HOMECOMINGS was engaged in the business of "mortgage lending"
10 as defined by Cal. Finance Code § 50003(n) and was licensed by the California
11 Department of Corporations (Lic. No. 413007). At all relevant times alleged in this
12 Complaint, HOMECOMINGS was a "finance lender" as defined by Cal. Finance
13 Code § 22009 and was licensed by the California Department of Corporations (Lic.
14 No. 6035717). Plaintiff is informed, believes and thereon alleges that
15 HOMECOMINGS FINANCIAL, LLC, is a wholly-owned subsidiary of
16 RESIDENTIAL FUNDING COMPANY, LLC, which is a wholly-owned
17 subsidiary of GMAC-RFC HOLDING COMPANY, LLC, which is a wholly-
18 owned subsidiary of RESIDENTIAL CAPITAL, LLC, which is a wholly-owned
19 subsidiary of GMAC MORTGAGE GROUP, INC., which is a wholly-owned
20 subsidiary of GMAC, LLC.

21
22
23 58. Defendant, GMAC MORTGAGE USA CORPORATION, A/K/A GMAC
24 MORTGAGE, LLC (hereinafter "GMAC"), is a Delaware corporation engaged in
25 the business of consumer mortgage lending in this state with its principal place of
26 business located at: 100 Witmer Road, Horsham, Pennsylvania 19044-0963.
27 GMAC may be served as follows: GMAC Mortgage USA Corporation, c/o
28 Corporation Service Company, 2730 Gateway Oaks Drive, Suite 100, Sacramento,

1 California 95833-3503. At all relevant times alleged in this Complaint GMAC
2 regularly extended consumer credit payable by written agreement in more than
3 four installments or for which a finance charge is imposed. Plaintiff is informed,
4 believes and thereon alleges, that GMAC is a "creditor" within the meaning of the
5 TILA, 15 U.S.C. § 1602(f) and Regulation Z § 226.2(a)(17). At all relevant times
6 alleged in this Complaint, GMAC was engaged in the business of "mortgage
7 lending" as defined by Cal. Finance Code § 50003(n) and was licensed by the
8 California Department of Corporations (Lic. No. 4130026). At all relevant times
9 alleged in this Complaint, GMAC was a "finance lender" as defined by Cal.
10 Finance Code § 22009 and was licensed by the California Department of
11 Corporations (Lic. No. 603A285). At all relevant times alleged in this Complaint,
12 GMAC was licensed by the California Department of Real Estate ("DRE") (Lic.
13 No. 01776965) and was a "licensee" as defined by Cal. Finance Code § 22007.
14 Plaintiff is informed, believes and thereon alleges, that GMAC
15 MORTGAGE USA CORPORATION, is a wholly-owned subsidiary of GMAC
16 MORTGAGE, LLC, which is a wholly-owned subsidiary of GMAC
17 RESIDENTIAL HOLDING COMPANY, LLC, which is a wholly-owned
18 subsidiary of RESIDENTIAL CAPITAL, LLC, which is a wholly-owned
19 subsidiary of GMAC MORTGAGE GROUP, INC., which is a wholly-owned
20 subsidiary of GMAC, LLC.

21
22 59. Defendant, First American Title Insurance Company ("First American") is a
23 wholly owned subsidiary of The First American Corporation. First American is a
24 publicly traded holding company that owns, in addition to First American Title,
25 several other companies in the field of real estate-related information services.
26 First American Title is a title insurance underwriter that issues title insurance
27 policies to real estate owners and lenders in 47 states and the District of Columbia.

28 60. The true names and capacities, whether individual, corporate, associate or
otherwise, of Defendants DOES 1 through 10, inclusive, and each of them, are

1 unknown to Plaintiff at this time, and Plaintiff therefore sues said Defendants by
2 such fictitious names. Plaintiff is informed, believes and thereon alleges, that at all
3 relevant times alleged in this Complaint, Defendants DOES 1 through 10,
4 inclusive, are natural persons, limited liability companies, corporations or business
5 entities of unknown form that have or are doing business in the state of California.
6 Plaintiff will seek leave of the Court to replace the fictitious names of these Doe
7 Defendants with their true names when they are discovered by Plaintiff.

8
9 61. Plaintiff is informed, believes and thereon alleges, that DOES 11 through 20,
10 inclusive, are securitized trusts, equity funds, collateralized debt obligations
11 (CDO), CDO underwriters, CDO trustees, hedge funds or other entities that acted
12 as additional lenders, loan originators and/or are assignees to the predatory loans
13 which are the subject of this action. Plaintiff will seek leave of the Court to replace
14 the fictitious names of these entities with their true names when they are
15 discovered by Plaintiff.

16
17 62. At all relevant times alleged in this Complaint, Defendants, and each of them,
18 were engaged in the business of promoting, marketing, distributing and selling the
19 predatory loans that are the subject of this Complaint, throughout the state of
20 California, including Santa Clara County.

21
22 63. Plaintiff is informed, believes and thereon alleges, that each and all of the
23 aforementioned Defendants are responsible in some manner, either by act or
24 omission, strict liability, fraud, deceit, fraudulent concealment, negligence,
25 respondeat superior, breach of contract or otherwise, for the occurrences herein
26 alleged, and that Plaintiff's injuries, as herein alleged, were proximately caused by
27 the conduct of Defendants.

1 64. Plaintiff is informed, believes and thereon alleges, that at all relevant times
2 alleged in this Complaint, each of the Defendants sued herein were the agent,
3 servant, employer, joint venturer, partner, division, owner, subsidiary, alias,
4 assignee and/or alter-ego of each of the remaining Defendants and were at all times
5 acting within the purpose and scope of such agency, servitude, joint venture,
6 division, ownership, subsidiary, alias, alter-ego, partnership or employment and
7 with the authority, consent, approval and ratification of each remaining Defendant.

8
9 65. Plaintiff is informed, believes and thereon alleges, that at all relevant times
10 alleged in this Complaint, each Defendant was the co-conspirator, agent, servant,
11 employee, assignee and/or joint venturer of each of the other Defendants and was
12 acting within the course and scope of said conspiracy, agency, employment,
13 assignment and/or joint venture and with the permission and consent of each of the
14 other Defendants.

15
16 66. Whenever reference is made in this Complaint to any act of any corporate or
17 other business Defendant, that reference shall mean that the corporation or other
18 business did the acts alleged in this Complaint through its officers, directors,
19 employees, agents and/or representatives while they were acting within the actual
20 or ostensible scope of their authority.

21
22 67. At all relevant times alleged in this Complaint, each Defendant has committed
23 the acts, caused others to commit the acts, ratified the commission of the acts, or
24 permitted others to commit the acts alleged in this Complaint and has made,
25 caused, ratified, or permitted others to make, the untrue or misleading statements
26 alleged in this Complaint. Whenever reference is made in this Complaint to any act
27 of Defendants, such allegation shall mean that each Defendant acted individually
28

1 and jointly with the other Defendants. "Defendants" wherever used in this
2 Complaint shall mean all named Defendants.

3
4
5
6 **FACTUAL ALLEGATIONS**

7 68. This action arises out of a loan to refinance the subject property, of which
8 Plaintiff is the rightful owner, and subsequent foreclosure related activity.

9 69. In or about October of 2006, Plaintiff sought to refinance loans secured against
10 the property located at 4011 Hubert Avenue, Los Angeles, CA 90008. Plaintiff
11 turned to broker WALMAR and lender AMN for assistance. WALMAR and AMN
12 represented to Plaintiff that they would provide Plaintiff with an affordable loan,
13 and represented to Plaintiff that she would not obtain better rates elsewhere. These
actions were intended to prevent Plaintiff from shopping for other lenders.

14 70. On December 2, 2006, Plaintiff executed a note, a deed of trust and other
15 related documents to borrow \$556,000.00, secured by the subject property
16 (hereinafter the "Subject Loan"). The terms of the loan were memorialized in a
17 promissory note which was in turn secured by a deed of trust on the subject
18 property. The deed of trust identified AMN as the Lender. The deed of trust
19 identified First American as the Title Insurer/Escrow Holder/Trustee. The deed of
trust identified WALMAR as the mortgage broker. The deed of trust further
identified MERS as the nominal beneficiary.

20 71. Said deed of trust was recorded on December 8, 2006. Plaintiff is informed and
21 believes that the terms of the Subject Loan were memorialized in a promissory
22 note which was in turn secured by a deed of trust on the subject property.

23 72. In deciding to sign the Subject Loan documents and to encumber the subject
24 property with a deed of trust, Plaintiff relied upon promises made by Defendants,
25 just as Defendants had intended.

26 73. Despite the fact that Defendants, knew that Plaintiff did not qualify for the
27 loan, Defendants induced Plaintiff to obligate herself to make monthly mortgage
28 payments on the Subject Loan on the subject property, which was an adjustable
rate mortgage.

1 74. Plaintiff entered into a consumer credit transaction loan with Defendants,
2 which extended consumer credit that was subject to a finance charge and which
3 was initially payable to AMN.

4 75. Said Subject Loan is subject to the Federal Truth in Lending Act, 15 U.S.C.
5 Section 1601 et seq. and its implementing regulations, 12 C.F.R. Part 226, "Reg.
6 Z".

7 76. Defendants were required to provide Plaintiff with certain disclosures pursuant
8 to "TILA". Under TILA and Regulation Z, Defendants were required to clearly
9 and conspicuously disclose the amount financed and the finance charge, among
10 other things, in connection with the Subject Loan.

11 77. When the Subject Loan was consummated, Plaintiff did not receive all the
12 required documents and disclosures under TILA.

13 78. Plaintiff rcvd a letter dated December 30, 2006, stating that beginning February
14 1, 2007 HOMECOMINGS would commence servicing Plaintiff's loan.

15
16 79. Plaintiff's initial mortgage payment was due on January 1, 2007.

17
18 80. Plaintiff rcvd a welcome letter dated January 16, 2007 from
19 HOMECOMINGS.

20
21 81. Plaintiff began experiencing a loss of income mid/late 2007, and sought help
22 from HOMECOMINGS.

23
24 82. HOMECOMINGS advised Plaintiff that unless her mortgage payments were
25 delinquent they would not be able to offer her any assistance.

1 83. On November 14, 2007, HOMECOMINGS' representative "Miriam" advised
2 Plaintiff that she should miss at least three payments in order to be considered for a
3 work-out option.

4
5 84. Apprehensively, Plaintiff did not make her monthly mortgage payments as
6 advised.

7
8 85. Plaintiff rcvd a letter dated April 11, 2008, stating the current creditor to whom
9 the Mortgage Loan debt is owed was RALI 2007-QO1 and that AURORA was the
10 current servicer of her loan and that they were under federal law to advise her of
11 the total amount she owed.

12
13 86. Plaintiff called her new servicer AURORA to explain how HOMECOMINGS
14 had advised her to miss at least 3 payments in order to qualify for a work-out
15 option.

16
17 87. AURORA claimed that they had no knowledge of what HOMECOMINGS
18 had advised. AURORA claimed that there were no notes confirming what Plaintiff
19 stated.

20
21 88. On April 30, 2008, AURORA proceeded to set-up Plaintiff into a repayment
22 agreement consisting of (6) payments with the (1st) payment of \$3100.00 and the
23 remaining (5) payments of \$3175.28.

24
25 89. Plaintiff made the initial payment of \$3100.00. Unfortunately, Plaintiff was
26 unable to keep up with the increased monthly payments under the repayment
27 agreement.

1 90. On June 17, 2008, Plaintiff entered into another repayment agreement with
2 AURORA. AURORA's representative verbally advised Plaintiff that this
3 repayment plan would consist of (4) consecutive payments. The (1st) payment
4 would be \$2,062.78. The (2nd and 3rd) payments would be \$2088.32 but, the (4th)
5 payment would be a balloon payment of \$9,635.74. The rep advised Plaintiff after
6 making the (3rd) payment to immediately call back in and submit a loan
7 modification application. The rep advised Plaintiff not to pay the (4th) payment.
8 The rep stated that the (4th) payment was indeed a balloon payment and that
9 AURORA did not expect Plaintiff to pay the (4th) payment. The reasoning was if
10 Plaintiff could make the balloon payment then Plaintiff would not need the loan
11 modification. The representative urged Plaintiff not to pay the (4th) payment or
12 any payment until Plaintiff heard from AURORA regarding the loan modification.
13 The representative advised Plaintiff that she would receive a repayment agreement
14 via mail and once it was received to immediately sign the agreement and fax back.

15
16 91. On August 25, 2008, Plaintiff entered into another repayment agreement with
17 AURORA. AURORA's representative, Cheryl (ID#C3F) verbally advised
18 Plaintiff that this repayment plan would consist of (4) consecutive payments. The
19 (1st) payment would be \$3100.00. The (2nd and 3rd) payments would be \$2139.99.
20 The representative advised Plaintiff after making the (3rd) payment to immediately
21 call back in and submit a loan modification application. The representative
22 advised Plaintiff not to pay the (4th) payment of \$10,647.96. The rep stated that the
23 (4th) payment was indeed a balloon payment and that AURORA did not expect
24 Plaintiff to pay the (4th) payment. The reasoning was if Plaintiff could make the
25 balloon payment then Plaintiff would not need the loan modification. The
26 representative urged Plaintiff not to pay the (4th) payment or any payment until
27 Plaintiff heard from AURORA regarding the loan modification. The
28

1 representative advised Plaintiff that she would receive a repayment agreement via
2 mail and once received to immediately sign the agreement and fax back.

3
4 92. Plaintiff received a letter dated October 7, 2008 congratulating her on
5 successfully maintaining her current home retention payment arrangement. The
6 letter also stated that AURORA would like to offer a more permanent workout
7 option. AURORA requested updated financial information within the next (14)
8 days.

9
10 93. Plaintiff received a letter dated December 23, 2008 from AURORA stating that
11 Plaintiff was denied a home retention workout because Plaintiff was financially
12 unable to afford monthly payments.

13
14 94. On January 8, 2009, (ID#C3F) Plaintiff entered into yet another repayment
15 agreement with AURORA. AURORA's representative, Cheryl verbally advised
16 Plaintiff that this repayment plan would consist of (4) consecutive payments. Each
17 payment would be in the amount of \$2100.00. Rep advised Plaintiff to apply once
18 again for a loan modification after making the (3rd) payment.

19
20 95. After Plaintiff made her (4th) payment, AURORA advised Plaintiff not to
21 make any additional payments and to just wait to hear from AURORA regarding
22 loan modification.

23
24 96. Plaintiff received a letter dated May 21, 2009 advising her that her loan was in
25 default by \$15,594.36 and she had (30) days to cure.

26
27 97. Sometime in July, Plaintiff hired an attorney to assist in achieving a loan
28 modification. Plaintiff's attorney contacted AURORA and somehow the existing

1 loan modification application in review was denied when the attorney entered into
2 the scenario AURORA claimed requested documentation had not been provided.

3 98. Attorney submits new loan modification application on Plaintiff's behalf.

4 AURORA informed Plaintiff's attorney that Plaintiff had 3 broken agreements and
5 therefore AURORA would not consider any type of work-out option.

6
7 99. Plaintiff admitted to breaking the first agreement but no more than that.

8 AURORA insisted that Plaintiff never made the (4th) payments on the second and
9 third agreements, (the balloon payments). Plaintiff argued that two of AURORA
10 representatives, one representative Plaintiff remembers with fondness, Cheryl
11 (ID#C3F) advised her NOT to make the (4th) payments so how could that result in
12 Plaintiff breaking the agreement. AURORA refused to assist. Plaintiff would then
13 hang up and call back and speak to someone else until a new rep decided to offer
14 her a work-out plan.

15
16 100. Plaintiff spoke with 3 different representatives each one offered her a
17 different work- out plan. The first representative's supervisor authorized an offer
18 to accept a little over an \$8,000.00 deposit based on Plaintiff's history of "Broken
19 Agreements". Plaintiff called back and another supervisor authorized an offer to
20 accept a little over \$6,000.00 deposit based on Plaintiff's history of "Broken
21 Agreements". Plaintiff called back and another supervisor authorized an offer to
22 accept a little over \$4,000.00 deposit based on Plaintiff's history of "Broken
23 Agreements". Plaintiff did not accept any of the above-mentioned offers because
24 they were unaffordable.

25
26 101. Plaintiff is informed and believes that a Notice of Default in connection with
27 the subject property was filed in Los Angeles County.
28

1 102. In recording the above-referenced Notice of Default, CAL-WESTERN, under
2 the deed of trust dated September 24, 2009, unlawfully initiated non-judicial
3 foreclosure proceedings against Plaintiff by recording a Notice of Default.

4 103. In October 2009, Plaintiff sought assistance from Neighborhood Assistance
5 Corporation of America ("NACA"). Plaintiff entered into an agreement with
6 NACA to assist her in acquiring a loan modification through the Making Home
7 Affordable Program ("HAMP").

8 104. Plaintiff is informed and believes that MERS assigned, granted and
9 transferred to AURORA all beneficial interest under the aforementioned deed of
10 trust recorded December 31, 2009 executed by Defendant by way of a Corporate
11 Assignment of Deed of Trust.

12 105. Plaintiff is informed and believes and thereon allege that MERS has no
13 standing in the arena, as it is not licensed to be and/or act as a beneficiary. MERS
14 was developed as a document storage company, not a beneficiary. Therefore, the
15 above-referenced deed of trust in connection with the Subject Loan must fail, as
16 there is no standing for any of the listed parties to assert an assignment.

17 106. Plaintiff is informed and believes and thereon alleges that on or about
18 November 23, 2009, CAL-WESTERN recorded a Notice of Trustee's Sale in
19 connection with the subject property for default under the above-referenced deed
20 of trust.

21 107. On January 12, 2010, Plaintiff was informed that her HAMP application was
22 denied due to insufficient income.

23 108. On January 15, 2010, Plaintiff entered into a forbearance agreement with
24 AURORA. Plaintiff agreed to make (6) consecutive payments of \$1122.00. After
25 the (2nd) payment, Plaintiff was advised to resubmit a new loan modification
26 application.
27
28

1 109. Plaintiff received a letter of denial dated November 16, for failure to submit
2 financial documentation.

3
4 110. On Thursday, November 25, 2010, Plaintiff called CAL-WESTERN to check
5 on the status of the foreclosure. CAL-WESTERN advised Plaintiff of a Trustee's
6 Sale scheduled for December 2, 2011.

7
8 111. Plaintiff immediately called AURORA and spoke with at least six different
9 representatives, four of whom advised Plaintiff that it was too late to enter into any
10 work-out agreements. The last two advised Plaintiff because of all the ("Broken
11 Agreements") they could not offer her any other work-out options.

12
13 112. November 30, 2010 Plaintiff filed an Emergency Chapter 7 Bankruptcy.

14
15 113. On November 30, 2010 after Plaintiff filed an Emergency Chapter 7,
16 AURORA called that same day and suggested that she apply for a loan
17 modification.

18
19 114. December 8, 2010 Plaintiff applied for a loan modification.

20
21 115. March 30, 2011 Plaintiff's bankruptcy was discharged.

22
23 116. A letter dated June 2, 2011 denied Plaintiff's loan modification based on
24 "excessive forbearance".

25
26 117. Plaintiff is informed and believes that Defendants, in committing the acts
27 alleged in this complaint, are engaging in a pattern of unlawful activity. In
28 pursuing the non-judicial foreclosure, Defendants represented that they have the
right to payment under the note in connection with the Subject Loan, payment of

1 which was secured by a deed of trust. Whereas, in fact, the Defendants were not in
2 possession of the note and they were neither holders of the note or non-holders of
3 the note entitled to payment, as those terms are used in California Commercial
4 Code Section 3301 and 3309, and therefore they were proceeding to foreclose
without rights under the law.

5 118. Plaintiff is informed and believes and thereon alleges that Defendants are
6 jointly and severally responsible for the acts of the other. Each Defendant was the
7 agent of the other. Each Defendant knew it would commit wrongful acts against
8 Plaintiff as referenced in this complaint. Each Defendant gave substantial
9 assistance or encouragement to the other Defendant to commit wrongful acts
10 against Plaintiff. Each Defendant's conduct was a substantial factor in causing
11 harm to Plaintiff.

12 **SECURITIZATION**

13
14 119. Securitization is a structured finance process, which involves pooling and
15 repackaging of cash flow producing assets into securities that are sold to investors.
16 Securitization, in its most basic form, is a method of selling assets. Rather than
17 selling those assets "whole," the assets are combined into a pool, and then that pool
18 is split into shares. Those shares are sold to investors who share the risk and
19 reward of the performance of those assets.

20
21 120. Any type of cash flow producing assets can be securitized and turned into
22 asset- backed securities (ABS). Mortgage-backed securities, which are backed by a
23 pool of mortgage loans, are formed when mortgages are purchased and placed into
24 an investment trust and shares of the trust are sold to investors. A prospectus, filed
25 with the Securities and Exchange Commission, details the composition of the loans
26 contained within the trust, and the payoff terms of the different levels of securities
27 issued by the trust, known as "tranches."
28

1 121. Different tranches within the ABS are rated differently, with senior classes of
2 most issues receiving the highest rating, and subordinated classes receiving
3 correspondingly lower credit ratings. However, the credit crisis of 2007-2008 has
4 exposed the structural flaw in the securitization process, which causes the resultant
5 ABS to be extremely high risk for investors -- loan originators retain no residual
6 risk for the loans they make, but collect substantial fees on loan issuance and
7 securitization, which causes unchecked degradation of underwriting standards.
8 This has proven to be an extremely high risk factor for investors, but was, until
9 recently, dismissed by most professional practitioners of finance, due to the
10 financial conflict of interest they had as beneficiaries of substantial fees from the
11 issuance and securitization of debt.

12
13 122. Because the formation of a securitized trust depends on the participation of
14 multiple entities, each of whom gets paid for its role in the process, securitization
15 of mortgages has resulted in widespread fraud and corruption. The diffusion of
16 responsibility among these entities has also made it difficult for officials and
17 consumers to hold players responsible. This diffusion was purposefully created to
18 allow participating entities to isolate themselves from liability.

19
20 123. Participants in the formation of a securitized trust include:

- 21 a. Mortgage Broker: A licensed professional who solicits customers for loans in
22 return for a commission from the Originator;
- 23 b. Originator: Initially owns the assets to be securitized. Performs basic loan
24 underwriting and provides access to funding. The funding may come from a line of
25 credit established by the originator or directly from the intended assignee of the
26 loans;
- 27 c. Sponsor: Usually a bank that backs the formation of loan pool by providing
28 liquidity;

- 1 d. Depositor: Assembles the underlying collateral, help structure the securities and
2 work with the financial markets in order to sell the securities to investors;
3 e. Trustee: Holds the trust assets and acts as a fiduciary to investors in the trust;
4 f. Guarantor: Provides guarantees or partial guarantees for the assets, the principal
5 and the interest payments, for a fee;
6 g. Special Purpose Entity (SPE): Used to create the illusion of a "true" sale;
7 h. Underwriter: Markets and distributes the asset-backed securities to investors;
8 and
9 i. Servicer: Collects payments and monitors the assets that are the crux of the
10 structured financial deal. The servicer and the originator are often the same entity.
11 Sometimes there are also sub-servicers who work under the servicer; frequently
12 this role is also taken by another entity that is already part of the structure.

13
14 124. Demand for mortgage-backed securities during the height of the credit boom
15 drove the creation of millions of loans, many of which, like those in the case at bar,
16 were the product of fraud and lax underwriting practices. The same brokers,
17 lenders and financial entities often worked together for years with the goal of
18 creating securitized trusts, which of necessity required thousands of new loan
19 originations. Many of these new loans came into being not to benefit borrowers or
20 expand home ownership, but simply to fill the pools of securitized trusts and feed
21 investors' insatiable appetite for mortgage-backed securities.

22
23 **FACTS COMMON TO ALL CAUSES OF ACTION**
24 **The Deceptive Loan Documents**

25
26 125. The Option ARM loan that is the subject of this Complaint was originated by
27 AMN, and purchased by Defendants consists of the following characteristics: (i)
28 the monthly payment in the Note is based upon a teaser interest rate of 1.5% ; (ii)
the payment schedule listed in the TILDS, for the first three to five years of the
loan, is based upon a fully amortizing payment at the teaser interest rate; (iii) the

1 interest rate adjusts after only one month to a rate which is the sum of an "index"
2 and a "margin"; and (iv) after the first three to five years of the loan, the amount of
3 the monthly payments increases substantially.

4 126. For Plaintiff's loan, the sum of the index and the margin would necessarily
5 result in an interest rate that always exceeded the teaser rate by several percentage
6 points. As a result, after only one month, the interest accruing on the Notes more
7 than doubled from an amount which was usually below 2% to an amount of at least
8 4%, and in some cases up to 8%. Because of this dramatic interest rate adjustment
9 after only one month, the monthly payment in the Note and TILDS, which was
10 calculated based on a fully amortizing payment at the low teaser rate, was no
11 longer sufficient to even pay the interest which accrued on the Note. Thus, the
12 unpaid interest would be added to the principal balance of the loan. Through this
13 negative amortization, Plaintiff's principal balance increased even as she made the
14 scheduled monthly payments in the Note and the TILDS. Thus, each month,
15 Plaintiff would owe more money than she did at the start of the loan, and have less
16 time to pay it back. To make matters worse, this "deferred interest" was added to
17 the principal balance and, in turn accrued more interest – in effect using compound
18 interest to increase the balance owed by Plaintiff.

19 127. Negative amortization was *certain to occur* because of the large spread
20 between the teaser rate and the combined index and margin. Indeed the margin
21 alone was consistently higher than the teaser rate. For example, for Plaintiff's
22 Note lists a teaser rate of 1.500% and a margin of 3.40%. Thus, even if the index
23 went down to zero, the combined total of the margin and index would never be
24 close to the teaser rate, and thus, the Option ARM loan was unmistakably designed
25 to cause negative amortization. The Loan Documents did not disclose this material
26 information to Plaintiff. Had the Loan Documents disclosed this material
27 information, Plaintiff would not have purchased the subject Option ARM loan.

28 128. The two most important pieces of information in any mortgage loan are the
interest rate and the amount of the monthly payments. For the subject Option ARM
loan, the disclosures of both pieces of this information were misleading and
omitted material facts. The Loan Documents disclosed a teaser interest rate, but
they did not disclose that this rate would sharply increase after only one month.
The Loan Documents disclosed a low monthly payment amount for the first three
to five years of the loan, but this did not reflect the actual amount of interest being
charged or the amount Plaintiff actually owed each month. Moreover, the Loan
Documents failed to disclose that the monthly payment was based upon the teaser
rate that was only in effect for one month. Had the Loan Documents disclosed the

1 payment amount sufficient to cover both principal and interest based upon the
2 index and margin that would be used to calculate the payments after the first
3 month, the payment amounts would have been approximately double those listed
4 in the TILDS.

5 129. Plaintiff was not informed of the guaranteed sharp increase in her interest
6 rates, and the fact that her monthly payment was not enough to pay the interest
7 accruing on her loan, until she had made multiple payments following the closing
8 of her loan. At this time she would receive statements reflecting that her principal
9 balances had increased with each month that had passed since the loan closed,
10 despite the fact that she had made all monthly payments as scheduled. By the time
11 this material information was disclosed to Plaintiff, they were locked into the loans
12 by a draconian prepayment penalty consisting of a prepayment charge equal to the
13 six months of interest. This provision was designed to deter or prevent borrowers
14 from refinancing the loans during the first three years of while they were incurring
15 negative amortization.

16 130. Although the Loan Documents provided that the monthly payment amount
17 would be adjusted every year to an amount that would fully amortize the remaining
18 principal balance of the loan at the existing interest rate, the Option ARM loan had
19 a payment cap, which provided that the monthly payment could only increase by
20 7.5% each year. The payment cap insures that negative amortization will continue
21 to occur even after borrower's payments are adjusted. For example, as discussed
22 above, after one month, the actual interest rate being charged is typically at least
23 double that of the teaser rate, and often much higher than that. Thus, a monthly
24 payment in year two of the loan that is only 7.5% higher than a monthly payment
25 based upon the teaser rate is not going to be close to sufficient to cover the
26 monthly interest charged on the loan, let alone amortize the principal balance that
27 has already increased due to 11 months of negative amortization.

28 131. The payment caps are subject to an overall cap on principal of 115% of the
original loan amount. Once the principal balance reaches this 115% cap, the 7.5%
limitation on payment increases no longer applies, and the payments are
immediately recast to fully amortizing payments of principal and interest. To the
extent that this built-in "payment shock" is more than Plaintiff can afford, she
needs to refinance 115% of the amount she initially borrowed (despite having
made all of the required payments) or risk losing her home to foreclosure.

132. Despite the foregoing, the only places in the Notes that even inferentially
reference negative amortization suggest that negative amortization was only a mere

1 possibility, rather than an absolute certainty. This was ambiguous, misleading and
2 deceptive, because it implies that negative amortization was subject to some future
3 contingency, such as an increase in the index on which the adjustable rate was
4 purportedly based, when, in fact, it was *guaranteed* to occur after only one month,
5 even if the index stayed the same or went down.

6 133. The undisclosed fact that negative amortization is certain to occur on the
7 subject loan and information regarding the interest rate to be charged on the loan
8 was information that Plaintiff would have found material when deciding whether to
9 purchase the subject Option ARM loan. Nevertheless, the Loan Documents did not
10 disclose this material information to Plaintiff. Had the Loan Documents disclosed
11 this material information, Plaintiff would not have purchased the subject Option
12 ARM loans.

13 134. The loan characteristics described above were true of the named Plaintiff's
14 loan and were also common characteristics of the loan forms devised, designed
15 and/or approved by Defendants and used by AMN during the liability period. It is
16 these Loan Documents that are the subject of this Complaint.

17 **RFC Was A Primary Participant in the Wrongful Conduct**
18 **RFC's Securitization Business**

19 135. RFC, is part of GMAC, LLC ("GMAC"), as it is a wholly-owned subsidiary
20 of Residential Capital, LLC ("ResCap"), a holding company for GMAC's
21 residential mortgage business. RFC is in the business of acquiring residential
22 mortgages, home equity loans, and lines of credit originated by other mortgage
23 banks and financial institutions. The company (also known as GMAC-RFC) then
24 packages the loans as mortgage-backed securities, which it sells to institutional
25 investors. RFC also provides warehouse lending facilities to mortgage loan
26 originators and correspondent lenders to originate residential mortgage loans.

27 136. According to GMAC's Form 10-K for 2006, ResCap is one of the largest
28 residential mortgage producers in the United States and produced approximately
\$162 billion in residential mortgage loans in 2006. ResCap sources its residential
mortgage loan production either by originating loans through a direct lending
network or purchasing loans in the secondary market from correspondent lenders,
such as AMN. Loans purchased from correspondent lenders are originated or
purchased by the correspondent lenders who then sell the loans to ResCap.
ResCap must approve any correspondent lenders who participate in the
correspondent lending program. In 2006, ResCap's mortgage loan productions

1 consisted of the purchase of 642,169 residential mortgage loans and the origination
2 of 408,070 residential mortgage loans.

3 137. ResCap sold most of the loans it purchased. According to the 2006 Form 10-
4 K, in 2006, ResCap sold \$152.7 billion in mortgage loans. Of that, \$106.8 billion
5 was generated through sales to non-government sponsored investors in the form of
6 whole loan sales and securitizations.

7 138. ResCap is also one of the largest providers of warehouse lending facilities to
8 correspondent lenders and other mortgage originators in the U.S. These lines of
9 credit enable the correspondent lenders and originators to finance residential
10 mortgage loans until they are sold on the secondary mortgage market. According to
11 an unnamed source quoted in an article in *Investment Dealers Digest*, warehouse
12 lenders have detailed knowledge of the originator's operations -- "[t]hey have that
13 day-to-day pipeline exposure to what the mortgage lender's doing."

14 139. At all relevant times, the subject Option ARM loan purchased by RFC which
15 were sold to Plaintiff, and the documents provided to them in conjunction with
16 those loans, were pre-approved by RFC as follows:

- 17 a. RFC is, and/or was, in the business of, among other things, securitizing
18 residential mortgage loans by purchasing loans in the secondary mortgage
19 market, packaging those loans into trusts or other vehicles, and selling
20 securities to investors based on the income to be derived from those loans.
- 21 b. Pursuant to a mortgage loan purchase agreement (the "Client Contract")
22 between RFC and AMN, RFC agreed to purchase and did purchase numerous
23 Option ARM mortgages originated by AMN. AMN did not fund its own loan
24 originations; rather it obtained working capital through warehouse lenders
25 such as RFC who held liens on mortgages that were awaiting securitization or
26 were in the process of closing (sometimes referred to as "pipeline loans").
27 Thus, after originating a loan, AMN immediately sold it to securitization
28 arrangers such as RFC in order to pay back the line of credit that it used to
fund the loan.
- c. AMN earned income in connection with the issuance and re-sale of Option
ARM loans, rather than in connection with servicing and holding those loans.
Because it needed to fund new Option ARM loans as it issued them and

1 because the monies available to originators for that purpose were provided by
2 warehouse lenders and needed to be repaid promptly, AMN needed assurance
3 that it would be able to promptly resell the Option ARM loans it originated to
4 institutions like RFC.

- 5 d. Pursuant to the Client Contract between AMN and RFC, AMN was
6 guaranteed a buyer for the Option ARM loans it originated provided that the
7 loans complied with RFC's standards, and RFC was guaranteed a pool of
8 mortgage loans to securitize.
- 9 e. Pursuant to this arrangement, AMN would collect fees from the homeowners
10 to whom it sold the Option ARM loans as well as RFC, while
11 RFC would collect revenues through the securitization process and in
12 connection with servicing rights it retained on the loans after they were
13 securitized.
- 14 f. On information and belief, in the RFC Client Guide, RFC established the
15 criteria that the Option ARM loans originated by AMN had to comply with in
16 order for RFC to purchase the loans, including RFC's underwriting
17 guidelines. The Client Guide also included instructions for how the Option
18 ARM loans were to be delivered to RFC, including the specific legal
19 documentation that had to accompany each loan.
- 20 g. AMN's compliance with the Client Contract and Client Guide was important
21 to AMN's operations. It was only by ensuring that the Option ARM loans it
22 originated complied with RFC's standards, that AMN could be assured that it
23 would be able to promptly resell the Option ARM loans it issued to RFC.
- 24 h. RFC's agreement to purchase the Option ARM loans sold by AMN's lenders
25 was critical to AMN's ability to market and sell those loans to Plaintiff and
26 other homeowners, since AMN did not fund the loans it originated. AMN
27 lacked the financial resources to issue the Option ARM loans here at issue
28 unless it was able to promptly sell them to investors such as RFC to repay its
warehouse lenders. Warehouse lenders required as a condition to loaning
AMN the funds, a guarantee that AMN would be able to promptly sell them
to investors such as RFC, and repayment directly from investors such as
RFC.
- i. While providing a stream of financing to AMN, RFC was aware of The
Material Omissions, and it approved the specific language that was used to
create those omissions.

BACKGROUND OF THE MORTGAGE LOAN TRUST

1
2
3 140. The "Trusts" allegedly foreclosing are actually Mortgage Backed Securities
4 ("MBS"). The Servicers, like ALS, are merely administrative entities which
5 collect the mortgage payments and escrow funds. The MBS have signed
6 themselves up under oath with the Securities and Exchange Commission ("SEC"),
7 and the Internal Revenue Service ("IRS"), as mortgage asset "pass through" entities
8 wherein they can never own the mortgage loan assets in the MBS. This allows
9 them to qualify as a Real Estate Mortgage Investment Conduit ("REMIC") rather
10 than an ordinary Real Estate Investment Trust ("REIT"). As long as the MBS is a
11 qualified REMIC, no income tax will be charged to the MBS. For purposes of this
12 action, "Trust" and MBS are interchangeable.

13
14
15 141. REMICs were newly invented in 1987 as a tax avoidance measure by
16 Investment Banks. To file as a REMIC, and in order to avoid one hundred percent
17 (100%) taxation by the IRS, an MBS REMIC could not engage in any prohibited
18 action. The "Trustee" cannot own the assets of the REMIC. A REMIC Trustee
19 could never claim it owned a mortgage loan. Hence, it can never be the owner of a
20 mortgage loan. Plaintiff will require the GAAP and FAS accounting in discovery
21 to document this non-compliance and to justify this malfeasance.

22
23 142. Additionally, and important to the issues presented with this particular
24 action, is the fact that in order to keep its tax status and to fund the "Trust" and
25 legally collect money from investors who bought in to the REMIC, the "Trustee"
26 or the more properly named, Custodian of the REMIC, had to have possession of
27 ALL the original blue ink Promissory Notes and original allonges and assignments
28 of the Notes, showing a complete paper chain of title.

1
2 143. Most importantly for this action, the "Trustee"/Custodian MUST have the
3 mortgages recorded in the investors' names as the beneficiaries of a MBS in the
4 year the MBS "closed." Every mortgage in the MBS should have been publicly
5 recorded in the County where the property was located with a mortgage in the
6 name similar to "RALI-2007QO1 Trust" on behalf of the beneficiaries of the
7 "RALI-2007QO1 Trust." The mortgages in this trust would all have had to have
8 been publicly recorded in the year 2007.

9
10 144. As previously pointed out, the "Trusts" were never set up or registered as
11 Trusts. The Promissory Notes were never obtained and the mortgages never
12 obtained or recorded.

13
14 145. The "Trust" engaged in a plethora of "prohibited activities" and sold the
15 investors certificates and Bonds with phantom mortgage backed assets. There are
16 now nationwide, numerous Class actions filed by the beneficiaries (the
17 owners/investors) of the "Trusts" against the entities who sold the investments as
18 REMICs based on a bogus prospectus.

19
20
21 146. In the above scenario, even if the attorney for the servicer ("pretender
22 lender") who is foreclosing on behalf of the Trustee (who in turn acting for the
23 securitized trust) produces a copy of a Note, or even an alleged original, the
24 mortgage loan was not conveyed in the trust under the requirements of the
25 prospectus for the trust or the REMIC requirements of the IRS.

26
27 147. As applied to the Plaintiff, the end result would be that the required MBS
28 asset, or any part thereof (mortgage note or security interest), would not have been

1 legally transferred to the trust to allow the trust to ever even be considered a
2 "holder" of a mortgage loan. Neither the "Trust" or the Servicer would ever be
3 entitled to bring a foreclosure, let alone enforce payment. The Trust will never
4 have authority to enforce payment. It cannot pick a side after the fact. It has
5 purported to comply with REMIC and IRS requirements to evade taxes, and now
6 attempts foreclosure, totally avoiding California law and trespassing upon the
7 provisions of the Deed of Trust, and it cannot even foreclose non-judicially.
8 Plaintiff is perplexed as to where and when the fraud may exactly end. The loans
9 were pooled, sold and transferred to another entity. The accounting shall prove the
10 loan was not repurchased in order to foreclose.

11
12 **BACKGROUND OF MORTGAGE ELECTRONIC REGISTRATION**
13 **SYSTEMS**
14

15 148. Given the venerable and uninterrupted legacy of land title recording acts, it
16 is interesting that first fundamental change to the American public land title
17 recording systems in over three hundred years was not initiated by publicly elected
18 leaders. Instead, Mortgage Electronic Recording Systems, Inc was conceived of
19 and created by a tight-knit group of powerful mortgage industry insiders. In
20 October of 1993, a task force of mortgage finance companies releases a "white
21 paper" at an annual convention of mortgage bankers.

22
23 149. The paper suggested that an electronic book entry system of tracking
24 mortgage loans would be better for the mortgage lending industry than the legal
25 system of county recording offices. The paper encouraged comments from the real
26 estate finance industry, leading to the formation of a steering committee affiliated
27 with the Mortgage Bankers Association of America (MBA).
28

1 150. The MBA is a trade association supported through dues paid by mortgage
2 lending companies that conducts public relations for the industry. This committee
3 of mortgage bankers retained Ernst & Young, an accounting firm, to study the
4 feasibility of developing MERS. In addition to studying the technological and
5 financial hurdles, the accounting firm also did some telephone interviews with
6 mortgage loan originators, servicers, warehouse lenders, custodians, assignment
7 processors, and employees at Fannie Mae and Freddie Mac. The accountants'
8 primary conclusion was that the finance industry could save a lot of money by
9 deciding not to pay the fees that local governments require to record mortgage
10 assignments.

11
12 151. The legislative history of MERS concept is not found in Congressional or
13 state assembly records, but in the trade magazine Mortgage Banking. In 1995 and
14 1996 the MBA trade association's steering committee developed a business plan
15 that would make MERS a reality. The principal consultant involved in creating
16 MERS explained that the "original investors came in 'on faith'...because the
17 details of how MERS would work weren't ironed out until mid-1996 at working
18 group meetings involving different industry players." MERS' Senior Vice
19 President of Operations and Information Management explained that the legal and
20 technological questions behind MERS were answered when "lenders and servicers
21 of various sizes, along with the secondary market agencies, 'got in a room
22 together, walked through the process and came to an agreement." Two years after
23 releasing the initial white paper, MERS, Inc. Incorporated in Delaware as a non-
24 stock corporation owned by mortgage banking companies that made initial capital
25 contributions ranging from 10 K to 100 K. according to a Mortgage Banking
26 Association Executive Vice President involved in the creation of MERS the
27 primary goal of the MERS initiative was to "lower costs for servicers."

28

1 152. Today mortgage finance companies currently use the MERS' name to
2 interact with the land title recording system in one of two ways: either by recording
3 MERS' name as an assignee, or by recording MERS' names as the original
4 mortgagee.

5
6 153. Under this recording strategy the originating lender makes a traditional
7 mortgage loan by listing itself as the payee on the Promissory Note and as the
8 mortgagee on the security instrument. The loan is then assigned to a seller for
9 repackaging through securitization for investors. However, instead of recording the
10 assignment to the seller or the trust that will ultimately own the loan, the originator
11 pays MERS a fee to record an assignment to MERS in the country records. MERS'
12 counsel maintains that MERS becomes a "mortgagee of record" even though its
13 ownership of the mortgage is purely fictional.

14
15 154. Although MERS records an assignment in the real property records, the
16 Promissory Note, which creates the legal obligation to repay the debt, is not
17 negotiated to MERS. Everyone agrees that MERS is never entitled to receive a
18 borrower's monthly payments, nor is MERS ever entitled to receive the proceeds
19 of a foreclosure or a Deed of Trust sale. MERS has no actual financial interest in
20 any mortgage loan. MERS does not even provide lien real estate of the mortgages
21 it purports to own, instead referring title attorneys, refinancing lenders, and
22 consumers to the loan's servicer. MERS' revenue comes, not from the loan or the
23 disposition of collateral, but from fees that the originator and other mortgage
24 finance companies pay to MERS. Once a loan is assigned to MERS, the public
25 land title records no longer reveal who (or what) actually owns a lien on the
26 property in question.

1 155. After a few years in business, MERS decided it could help mortgage
2 financiers pay even less to county governments by simply doing away with the first
3 assignment to MERS, and instead listing MERS as the mortgagee in the original
4 mortgage. Once again, although MERS does not actually advance any loan
5 principal to the homeowner, does not have the right to receive any payments from
6 the borrower, and is not the actual party in interest in any foreclosure proceeding.
7 Nevertheless, the actual mortgagee pays a fee to MERS to induce MERS to record
8 the mortgage in MERS' name. By eliminating the reference to an actual mortgagee
9 or the actual assignee, MERS estimated it would save the originator an average of
10 \$22.00 per loan.

11
12 156. In addition to its record keeping and recording system liaison roles, MERS
13 has also become directly involved in consumer finance litigation. When MERS is
14 listed in county records as the owner of a mortgage, courts have generally made the
15 natural assumption that the appropriate plaintiff for bringing a foreclosure action is
16 in fact MERS. In an effort to convolute the proceedings and move foreclosures
17 along as quick as can be, MERS has allowed actual mortgagees and loan assignees
18 or their servicers to bring foreclosure actions in MERS' name, rather than in their
19 own name.

20
21 157. Plaintiff alleges that MERS does this in an effort to illegally privatize the
22 recordation process, avoiding the public recordation fees AND allowing them to
23 keep transfers and assignments SECRET. Once a loan is assigned to MERS, the
24 public land title records no longer reveal who (or what) actually owns a lien on the
25 property in question.

26
27 158. MERS eventually convinced financiers to simply do away with the first
28 assignment to MERS, and instead list them as the mortgagee in the original

1 mortgage. Once again: MERS does not actually advance any loan principal to the
2 homeowner, or have the rights to receive any payments from the borrower, or even
3 an actual party of interest.

4
5 **MERS IS TOXIC TO THE CHAIN OF TITLE**

6
7 159. The chain of title, as stated above, reveals a Deed of Trust ("DOT") in favor
8 of MERS as nominee. No issues are readily apparent as to the execution of the
9 Deed of Trust. However, the content of the DOT raises factual issues that require
10 further examination and the production of additional documents and information.
11 Since MERS is an IT platform operated for the purposes of its private owners, it is
12 not authorized by Florida Statutes nor California Statutes to serve as the equivalent
13 of a recording record for instruments in the public records. It is a data entry and
14 retrieval system that is private, not public. Since MERS was named as nominee
15 and the MERS documentation available on the internet clearly state that under no
16 circumstances will MERS ever claim an interest in the real property, the DOT, the
17 Note, nor will ever be the actual lender, beneficiary or mortgagee in any
18 transaction, the effect of naming MERS raises factual issues since there are
19 questions regarding title raised by the conflict between naming MERS and MERS
20 disclaiming any such interest. There is no record of MERS accepting the position
21 as nominee and if so under what circumstances. Those terms exist in agreements
22 executed between members of MERS and one of the MERS corporations and are
23 unavailable to the Trustors.
24
25
26
27
28

MERS CANNOT ASSIGN THE DEED OF TRUST

1
2
3 160. Theodore Schultz's fraudulent attempt to assign the Deed of Trust was all in
4 vain due to the fact that MERS simply can NOT assign.

5
6 161. MERS, by its own self definition, does not own or hold notes or mortgages,
7 and is not a vehicle for transferring interest (which means it does not assign, sell,
8 convey, deed, bargain or assign interests), so MERS which does not own
9 mortgages, cannot foreclose, yet (little realized) neither can it assign.

10
11 162. The big banks constantly present purported mortgage assignments by MERS
12 many of them back-dated (though other business executives go to jail for back-
13 dating financial documents), for the big banks are depending on us to believe so
14 generally in "assignment" that we will ignore the reality that MERS cannot own –
15 and it cannot assign – what it does not own.

16 MERS only, records what is going on with others, while serving as "non-owning"
17 mortgagee.
18

19
20 163. Thus, MERS, as the mortgagee in the MERS mortgage, is a crippled,
21 invalid, impotent mortgagee, since as a non-owner, non-holder, it cannot foreclose,
22 and as "not a vehicle for transferring interests", it cannot assign.

23
24 164. Mortgages and notes can be assigned, if someone owns them, but MERS
25 does not own notes or mortgages, neither is it a vehicle for transferring interests, so
26 MERS cannot assign what it does not own.
27
28

1 165. The mortgage contract makes MERS, which cannot own notes or mortgages,
2 the mortgagee, but it is a mortgagee which cannot own notes or mortgages.

3
4 166. MERS is thus an invalid and impotent, quite powerless mortgagee – yes, a
5 mortgagee, a mortgagee which cannot do anything except record data in its own
6 records. MERS cannot foreclose, nor assign. Only mortgages are assigned by
7 those who “own” them, but MERS does not own, so it cannot assign.
8

9
10
11 167. "A mortgagee's purported assignment of the mortgage without an assignment
12 of the debt which is secured is a legal nullity." Kelley V. Upshaw (1952) 39 Cal
13 2d 179, 246 P2d 23, 1952 Cal. LEXIS 248.
14

15
16
17 168. "A trust deed has no assignable quality independent of the debt; it may not
18 be assigned or transferred apart from the debt; and an attempt to assign the trust
19 deed without a transfer of the debt is without effect." Domarad v. Fisher & Burke,
20 Inc. (1969 Cal. App. 1st Dist) 270 Cal. App. 2d 543, 76 Cal. Rptr. 529, 1969 Cal.
21 App. LEXIS 1556.

22
23 169. MERS is a Non-Authorized Agent and cannot legally assign the Promissory
24 Note, making any foreclosure by other than the original lender wrongful, for the
25 following reasons. 1) Under established and binding Ca law, a Nominee can't
26 assign the Note. Born V. Koop 1962 200 C. A. 2d 519[200 CalApp2d Page 527,
27 528 2) On most Notes, the term Nominee is not included and MERS never takes
ownership, making it unenforceable and unassignable by MERS. Ott v. Home
Savings & Loan Association, 265 F. 2d 643 [647,648
28

1
2 **MERS DEPOSITION: "WE HAVE NO EMPLOYEES"**

3
4 170. Recently, the treasurer/secretary of MERS, William Hultman, was deposed
5 by a law firm for Superior court of New Jersey Docket No. F-10209-08 . His
6 answers are nothing short of stunning. He admitted to the fact that anyone could
7 claim to be an "assistant secretary" of MERS in documents initiating foreclosures,
8 even if MERS had never actually ever heard of the person. It appears ALL of
9 these people amount to the thousands and there are in reality only four true
10 corporate officers for MERS. None of them are the signer on the Corporate
11 Assignment of the Deed of Trust for Plaintiff's loan.
12

13 **CALIFORNIA U.S. BANKRUPTCY COURT ISSUES RULING**
14 **MERS HAS NO EVIDENCE OF STANDING TO ASSIGN NOTE**
15 **TO ANOTHER BENEFICIARY**
16

17
18 171. MERS does not have the capacity as only a nominee to execute the process
19 of foreclosure or to assign security instruments from one beneficiary to the other.
20 In Debtor Luis E. Gallardo, 10-04710-MM7, vs Movant US Bank National
21 Association, as Trustee for CSMC Mortgage-Backed Pass-Through Certificates,
22 Series 2006-7, a recent San Diego Bankruptcy decision handed down by the
23 Honorable Judge Margaret M. Mann, Judge Mann ruled "Movant has not supplied
24 evidence that establishes that Movant has standing to seek stay relief. Movant has
25 attached an "Assignment of Deed of Trust" from MERS to Movant, which assigns
26 the trust deed and the related note. But, there is no evidence that MERS ever
27 received an assignment of the note or had the ability to assign the note to Movant.
28 The note attached to the motion does not indicate that the note has been endorsed

1 to Movant or endorsed in blank such that it became bearer paper. Without evidence
2 either that MERS could properly assign the note, or that the note was endorsed to
3 Movant or in blank, Movant has not established standing to seek stay relief.”

4
5 **CALIFORNIA U.S. BANKRUPTCY COURT ISSUES RULING**
6 **MERS COULD NOT ASSIGN NOTE TO CITIBANK**
7

8 172. The United States Bankruptcy Court for the Eastern District of California
9 has issued a ruling dated May 20, 2010 in the matter of *In Re: Walker*, Case No.
10 10-21656-E-11 which found that MERS could not, as a matter of law, have
11 transferred the Note to Citibank from the original lender, Bayrock Mortgage Corp.
12 The Court’s opinion is headlined stating that MERS and Citibank are not the real
13 parties in interest.
14

15 173. The court found that MERS acted “only as a nominee” for Bayrock under
16 the Deed of Trust and there was no evidence that the Note was transferred. The
17 opinion also provides that “several courts have acknowledged that MERS is not the
18 owner of the underlying Note and therefore could not transfer the Note, the
19 beneficial interest in the Deed of Trust, or foreclose on the property secured by the
20 deed”, citing the well-known cases of *In Re Vargas* (California Bankruptcy Court),
21 *Landmark v. Kesler* (Kansas decision as to lack of authority of MERS), *LaSalle*
22 *Bank v. Lamy* (New York), and *In Re Foreclosure Cases* (the “Boyko” decision
23 from Ohio Federal Court).
24

25
26 174. The opinion states: “Since no evidence of MERS’ ownership of the
27 underlying Note has been offered, and other courts have concluded that
28 MERS does not own the underlying Notes, this court is convinced that MERS

1 had no interest it could transfer to Citibank. Since MERS did not own the
2 underlying Note, it could not transfer the beneficial interest of the Deed of
3 Trust to another. Any attempt to transfer the beneficial interest of a trust
4 deed without ownership of the underlying Note is void under California law.”

5
6 175. Read that again: “Any attempt to transfer the beneficial interest of a trust
7 deed without ownership of the underlying note IS VOID UNDER CALIFORNIA
8 LAW.”

9
10 176. This conclusion was based upon California law cited in the opinion that the
11 Note and the mortgage are inseparable, with the former being essential while the
12 latter is “an incident”, and that an assignment of the note carries the mortgage with
13 it, “while an assignment of the latter [the mortgage] alone is a nullity.”

14
15 177. As MERS must own the Note in order to assign the incident Deed of Trust,
16 MERS is legally precluded from assigning the Deed of Trust for want of
17 ownership of the Note, and cannot assign the Note in any event as it never
18 owned it.

19
20
21 178. MERS’ lack of ownership interest in Promissory Note is a matter of decided
22 case law based on a record stipulation of MERS’ own lawyers in the MERS v.
23 Nebraska Dept. of Finance decision.

24 This opinion thus serves as a legal basis to challenge any foreclosure in
25 California based on a MERS assignment; to seek to void any MERS
26 assignment of the Deed of Trust or the Note to a third party for purposes of
27 foreclosure; and should be sufficient for a borrower to not only obtain a TRO
28 against a Trustee’s Sale, but also a Preliminary Injunction barring any sale

1 **pending any litigation filed by the borrower challenging a foreclosure based**
2 **on a MERS assignment.**

3
4 179. The Court concluded by stating: "Since the claimant, Citibank, has not
5 established that it is the owner of the Promissory Note secured by the trust deed,
6 Citibank is unable to assert a claim for payment in this case." Thus, any
7 foreclosing party which is not the original lender which purports to claim payment
8 due under the Note and the right to foreclose in California on the basis of a MERS
9 assignment does not have the right to do so under the principles of this opinion.

10
11 180. This ruling is more than significant not only for California borrowers, but for
12 borrowers nationwide, as this California court made it a point to cite non-
13 bankruptcy cases as to the lack of authority of MERS in its opinion.

14
15 181. Further, this opinion is consistent with the prior rulings of the Idaho and
16 Nevada Bankruptcy courts on the same issue, that being the lack of authority for
17 MERS to transfer the Note as it never owned it (and cannot, per MERS' own
18 contract which provides that MERS agrees not to assert any rights to mortgage
19 loans or properties mortgaged thereby).

20
21
22 182. Plaintiffs are perplexed as to why Theodore Schultz and ALS would go to
23 such great lengths to commit fraud when the act of assigning on MERS's behalf
24 was distinctly moot from its onset.

FIRST CLAIM FOR RELIEF
(ENFORCEMENT FOR RESCISSION AND RESTORATION OF TITLE
AND ALLOW LOAN MODIFICATION TO PREVAIL)

183. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

184. An actual controversy exists in which the parties must ascertain their rights, duties and right to title in the Subject Property.

185. A judicial determination is necessary that the parties may ascertain their rights, duties and right to title in the Subject Property.

186. The Plaintiff desires that the court make a judicial determination as to their rights, duties and right to title in the Subject Property.

187. An actual controversy has arisen and now exists between Plaintiff and Defendants, and each of them, concerning their respective rights, obligations and duties as it relates to the Subject Property. In particular, on one hand, Plaintiff contends: (a) that Defendants MERS, AURORA and CAL-WESTERN have conducted an unlawful foreclosure against Plaintiff and her property; (b) that failing to comply with the Deed of Trust, California Civil Code and California Commercial Code as more particularly alleged in paragraph 18 Defendants are not entitled to proceed with the foreclosure until such compliance occurs; and (c) on information and belief, that Defendants are not otherwise entitled to continue with said foreclosure because of the lack of proper statutory execution of the Deed of Trust as more fully alleged in paragraph 12 through 15.

1 188. Plaintiff desires a judicial determination of Defendants rights, obligations
2 and duties, and to enforce Defendants to cancel and rescind the illegal foreclosure
3 on Plaintiff's Subject Property.

4
5 189. Plaintiff alleges that Defendants, and each of them, are engaged in an illegal
6 scheme, the purpose of which was to execute an illegal foreclosure secured by real
7 property in order to hold an illegal Trustee's Sale and take title to Plaintiff's
8 property by wrongful conveyance. Plaintiff alleges that Defendants, and each of
9 them, have represented to Plaintiff and to third parties that they were the owner of
10 the Trust Deed and Note as either the Trustee or the Beneficiary regarding
11 Plaintiff's real property. Based on this representation they caused a Notice of
12 Default to be issued and recorded without disclosing their true role, and thereafter
13 an illegal Notice of Trustee's Sale to hold a public sale which would result in a
14 wrongful conveyance to the alleged beneficiary. Predictably they would then
15 record an illegal Trustee's Deed Upon Sale, permanently affecting Plaintiff's right,
16 title and interest in the Subject Property and eventually institute illegal eviction
17 proceedings. Defendants have no lawful security interest in the subject property to
18 effectuate any of these proceedings.
19

20
21 190. Plaintiff alleges that based upon the foregoing representations that California
22 Civil Code section 2924 et seq. and its subparts are being applied to Plaintiff in a
23 manner that is unlawful. The party acting as the Trustee has proceeded with the
24 foreclosure of Plaintiff's Subject Property notwithstanding the fact that the Trustee
25 knew or reasonably should have known it did not have the power to initiate
26 foreclosure on September 24, 2009 and MERS knew or reasonably should have
27 known it did not comply with California Civil Code 2932, 2932.5, 2924 et seq.
28 because it had no assignment or beneficial interest to conduct such foreclosure.

1 MERS knew or reasonably should have known it did not convey the power of sale
2 to the alleged Trustee CAL-WESTERN because it violated the terms of California
3 Civil Code section 2932.5 and Theodore Schultz's fraudulent assignment vested no
4 beneficial interest to Plaintiff's Deed of Trust.

5
6 191. Defendants have no standing to enforce a non-judicial foreclosure.

7
8 192. Defendants are strangers to this transaction, and had no authority to go
9 forward with the foreclosure and Trustee's Sale.

10
11 193. Plaintiff executed a Promissory Note and a Deed of Trust to American
12 Mortgage Network, Inc.(hereinafter "AMN")

13
14 194. AMN is the Lender and only party entitled to enforce the Note and any
15 security interest with it.

16
17 195. AURORA is not listed anywhere in the Deed of Trust or Promissory Note.

18
19
20 196. In California, California Civil Code § 2932.5 governs the Power of sale
21 under an assigned mortgage, and provides that the power of sale can only vest in a
22 person entitled to money payments: "Where a power to sell real property is given
23 to a mortgagee, or other encumbrancer, in an instrument intended to secure the
24 payment of money, the power is part of the security and vests in any person who
25 by assignment becomes entitled to payment of the money secured by the
26 instrument. The power of sale may be exercised by the assignee if the assignment
27 is duly acknowledged and recorded."
28

1 197. The Los Angeles County Recorder's Office does not contain any evidence of
2 a valid assignment from a true beneficiary and has never assigned their rights
3 under the Note.

4
5 198. The power of sale may not be exercised by any of the Defendants since there
6 was never an acknowledged and recorded valid assignment pursuant to California
7 Civil Code §2932.5.

8
9 199. Since the Defendants did not comply with California Civil Code §2932.5,
10 the Notice of Default provisions of California Civil Code § 2924 and Notice of
11 Sale provisions of California Civil Code §2924(f) were likewise never complied
12 with.

13
14 200. MERS, AURORA and CAL-WESTERN never complied with the Notice of
15 Default provisions of California Civil Code §2924 and Notice of Sale provisions of
16 California Civil Code §2924(f).

17
18
19 201. That by virtue of the method and manner of Defendants carrying out Civil
20 Code section 2924 et seq., the foreclosure of the Subject Property is void ab initio
21 as a matter of law and must rescind the Notice of Default rendering the Notice of
22 Trustee's Sale void and rescinded from Plaintiff's property.

23
24 202. Plaintiff alleges that Defendants, and each of them, are engaged in and
25 continue to engage in violations of California law including but, not limited to:
26 Civil Code section 2924 et seq. and 2932.5 et seq., and unless restrained will
27 continue to engage in such misconduct, and that a public benefit necessitates that
28 Defendants be restrained from such conduct in the future. This is relief that can be

1 granted. If Defendants cannot prove to being the real parties to enforce the note,
2 they must rescind. Being that the foreclosure is defective, they must rescind.

3
4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF THE TRUTH IN LENDING ACT**
6 **15 U.S.C. SECTION 1601**
7 **(AGAINST ALL DEFENDANTS)**

8 203. TILA, 15 U.S.C. Section 1601 et seq., requires that consumers be given
9 meaningful disclosure of credit terms where the interest rate is not fixed so that the
10 consumer is informed of the cost and variable rate feature of the loan.

11 204. Full disclosure by a broker and/or lender enables a consumer to make an
12 appropriate loan comparison. A lender's misleading disclosure of credit terms to a
13 consumer is tantamount to no disclosure. Smith v. Chapman, (5th Cir. 1980) 614 F.
14 2d 968, 977.

15 205. In a residential mortgage transaction subject to the Real Estate Settlement
16 Procedures Act 12 U.S.C. Section 2601 et seq., a broker is required to provide an
17 itemization of the amount of money financed also known as a "good faith
18 estimate". 12 Code of Federal Regulations 226.18, 19. A broker's failure to make a
19 clear, conspicuous and accurate material disclosure amounting to a good faith
20 estimate triggers an extended right of rescission. The required itemization details
21 include: (1) annual percentage rate, (2) finance charge (3) amount financed (4)
22 total payments and (5) payment schedule. 12 Code of Federal Regulations 226.23.

23 206. Further disclosures under federal law which amount to a TILA violation if not
24 made include but are not limited to providing a consumer with: 1. a good faith
25 estimate, 2. truth in lending documents, servicing transfer documents, adjustable
26 rate booklet, right to copy of appraisal documents and federal equal opportunity
27 documents.

28 207. California Business and Professions Code Section 10240 et seq. requires that
licensed brokers provide disclosures to consumers reflecting the maximum costs
and expenses of making a loan including which also amount to a TILA violation if
not made. These include
1. appraisal fees 2. escrow fees 3. title charges 4. notary fees 5. recording fees and
investigation fees. 6. credit

1 208. A lender like a broker is required to disclose an itemization of the amount of
2 money financed also known as a "good faith estimate." 12 Code of Federal
3 Regulations 226.18, 19.

4 209. Borrowers must be provided with itemized disclosures, including: (1) annual
5 percentage rate, (2) finance charge (3) amount financed (4) total payments and (5)
6 payment schedule. 12 Code of Federal Regulations 226.23. Similarly, the
7 appropriate Truth in Lending, Servicing Transfer, Adjustable Rate Booklet, Copy
8 of Appraisal and Federal Equal Opportunity documents must be provided under 24
Code of Federal Regulations 3500.6(a).

9 210. A failure to make clear, conspicuous and accurate material lender disclosures
10 violates the provisions of TILA.

11 211. The Subject Loan is a consumer credit transaction subject to the provisions of
12 TILA. The Subject Loan transaction between Plaintiffs and said Creditors was a
13 consumer loan transaction wherein credit was extended to Plaintiffs, which was
14 secured by an interest purportedly held by said Creditors in the subject property.

15 212. Defendants AMN and RFC, Lenders for the Subject Loan, and WALMAR,
16 Broker for the Subject Loan, are "creditors" as defined by 15 U.S.C. Section 1602
17 (Lenders and Broker will be referred to as "Creditors" for the purposes of this First
Cause of Action).

18 213. As a consumer credit transaction, Creditors were required to provide Plaintiffs
19 with mandatory Truth-in Lending disclosure statements and notice of the
20 borrower's right to rescind, among many other disclosures. There is no evidence
21 that Plaintiff received Broker's early consumer loan mortgage document disclosure
22 within three (3) days from the day of Plaintiff's original loan application in
violation of the Truth in Lending Act 15 U.S.C. Section 1601.

23 214. There is no evidence that Plaintiff received Lenders' required early
24 disclosures, in violation of the Truth in Lending Act 15 U.S.C. Section 1601 given
25 that Plaintiff's loan is a residential mortgage transaction subject to the Real Estate
Settlement Procedures Act 12 U.S.C. Section 2602 et seq.

26
27 215. In the course of soliciting and executing the Subject Loan and/or extending
28 other consumer credit, said Creditors in numerous instances have violated the

1 requirements of TILA and Regulation Z. Said violations include but are not limited
2 to the following:

3 a. failing to make TILA disclosures in writing before consummation of a
4 consumer credit transaction, in violation of Sections 121(a) and 128(b) (1) of
5 TILA, 15 U.S.C. Sections 1601-1631 (a) and 1638 (b) (1), and Sections 226.17(a)
6 and (b) and 226.18 of Regulation Z, 12 C.F.R. Section 226.17(a) and (b), 226.18,
7 and 226.23 (a) (3), California Business and Professions Code Section 10240,
8 10248.3, 10241;

9 b. failing to make and deliver good faith estimates of the disclosures required by
10 15 U.S.C. Section 1601, 12 C.F.R. Section 226.19 (a), Section 226.18;

11 c. failing to disclose, or accurately disclose the following information:

12 i. the identity of the creditor making the disclosures, in violation of
13 Section 128(a) (1) of TILA, 15 U.S.C. Section 1638(a) (1), and Section
14 226.18(a) of Regulation Z, 12 C.F.R. Section 226.18;

15 ii. the amount financed, in violation of Section 128(a) (2) of TILA, 15
16 U.S.C. Section 1638(a) (2), and Section 226.18(b) of Regulation Z, 12
17 C.F.R. Section 226.18(b) (c);

18 iii. the finance charge, in violation of Sections 106 and 128(a) (3) of TILA,
19 15 U.S.C. Section 1605 and 1638(a) (3), and Sections 226.4 and
20 226.18(d) of Regulation Z, 12 C.F.R. Section 226.4 and 226.18(d);

21 iv. the annual percentage rate, in violation of Sections 107 and 128 (a) (4) of
22 TILA, 15 U.S.C. Section 1605-6 and 1638 (a) (3) (4), and Sections
23 226.18(e) and 226.22 of Regulation Z, 12 C.F.R. Section 226.18(e) and
24 226.22;

25 v. the payment schedule, in violation of Section 128(a) (6) of TILA, 15
26 U.S.C. Section 1638(a) (6), and Section 226.18(g) of Regulation Z, 12
27 C.F.R. Section 226.18(g);

28 vi. the total of payments, in violation of Section 128(a) (5) of TILA, 15
U.S.C. Section 1638(a) (5), and Section 226.18(h) of Regulation Z, 12
C.F.R. Section 226.18(h) i;

1 vii. whether or not a penalty may be imposed if the obligation is prepaid in
2 full, in violation of Section 128(a) (11) of TILA, 15 U.S.C. Section
3 1638(a) (11), and Section 226.18(k) (1) of Regulation Z, 12 C.F.R.
4 Section 226.18(k) (1);

5 viii. any dollar or percentage charge that may be imposed before maturity due to a
6 late payment, other than a deferral or extension charge, in violation of Section
7 128(a) (10) of TILA, 15 U.S.C. Section 1638(a) (10), and Section 226.18 (1) of
8 Regulation Z, 12 C.F.R. Section 226.18(1);

9 ix. the fact that the creditor has or will acquire a security interest in the consumer's
10 principal dwelling, in violation of Section 128(a) (9) of TILA, 15 U.S.C. Section
11 1638(a) (9), and Section 226.18(m) of Regulation Z, 12 C.F.R. Section 226.18(m);

12 x. the failure of Creditors to provide initial disclosures to Plaintiff;

13 xi. making consumer credit disclosures that do not reflect the terms of the legal
14 obligation between the parties, in violation of Section 226.17(c)(1) of Regulation
15 Z, 12 C.F.R. Section 226.17(c)(1); and

16 216. By failing to disclose, or accurately disclose, material credit information, as
17 described above, Creditors have engaged, and continue to engage, in deceptive acts
18 or practices.

19 217. Records in connection with the Subject Loan indicate that Creditors extended
20 credit to Plaintiff without regard for her ability to pay and falsified relevant income
21 and appraisal documents to ensure approval of the Subject Loan.

22 218. The statute of limitations for a TILA claim is subject to equitable tolling upon
23 the pleading of fraud. The doctrine of equitable tolling suspends the limitations
24 period until the borrower discovers or had reasonable opportunity to discover the
25 fraud or nondisclosures that form the basis of the TILA actions. Plaintiffs plead
26 Defendants' fraud throughout this Complaint. Due to Defendants' fraudulent
27 actions, the Statute of Limitations period has not yet expired.

28 219. As a result of these TILA violations, among others, Creditors are liable to
Plaintiff in the amount of twice the finance charge, actual damages to be
established at trial, and costs in accordance with 15 U.S.C. Section 1640. Plaintiff
are also entitled to an order requiring Creditors to take all actions necessary to

1 terminate any security interest in the subject residence created under the Subject
2 Loan and a declaration by this Court that the security interest is void; expungement
3 of any foreclosure instruments, including without limitation, the Notice of Default
4 and Notice of Trustee's Sale, relating to the Subject Loan from any public record;
5 removal of any derogatory information reported to any credit reporting agency or
6 credit reporting bureau relating to the Subject Loan; the return to Plaintiff of any
7 money given by Plaintiff to anyone, including said Creditors in connection with the
8 Subject Loan; statutory damages; costs and reasonable attorney's fees and such
9 other relief as this Court deems just and proper.

10 220. Moreover, said Creditors' conduct was willful, malicious and outrageous and
11 therefore punitive damages are warranted and demanded.

12 221. As a result of said Creditors' misconduct, Plaintiff is entitled to declaratory
13 and injunctive relief preventing said Creditors from taking any action to collect on
14 the Subject Loan and/or to foreclose upon the subject property, and/or to transfer
15 the subject property.

- 16 1. In violation of the federal Truth in Lending Act, AMN extended
17 credit to Plaintiff without regard to the consumer's repayment ability
18 as of the time of the loan consummation.
 - 19 2. Defendants, acted in concert with AMN to extend this credit.
 - 20 3. AMN acted without regard to repayment ability of Plaintiff.
 - 21 4. AMN and WALMAR overstated the assets, income, collateral, or
22 other financial information and committed forgery in order to qualify
23 Plaintiff for the adjustable rate mortgage in the amount of
24 \$556,000.00 for the first lien and \$69,500.00 for the junior lien.
 - 25 5. Defendants was aware of this overstatement .
 - 26 6. Defendants concealed this overstatement from Plaintiff.
- 27
28

- 1 7. AMN failed to disclose certain finance charges on the HUD-1
2 statement that were to be imposed as a part of the extension of credit
3 in the form of the mortgage and/or failed to explain how those
4 charges were to be determined.
5
- 6 8. Neither RFC nor AMN disclosed the payments made to and received
7 by AMN for its pre-selling and holding the mortgage for RFC.
8
- 9 9. This fee arrangement was paid in the form of an unlawful yield
10 spread premium, undisclosed to the borrower, but paid for by her in
11 the form of higher payments or interest over the life of the loan.
12
- 13 10. Defendants RFC and AMN concealed these facts from Plaintiff
14
- 15 11. This concealment prevented Plaintiff from readily discovering the
16 undisclosed acts.
17
- 18 12. Plaintiff was duly diligent in ascertaining these violations.
19
20

21 **SECOND CAUSE OF ACTION**
22 **VIOLATION OF CALIFORNIA RESIDENTIAL MORTGAGE LENDING**
23 **ACT CALIFORNIA FINANCIAL CODE SECTION 50000 ET AL**
(AGAINST ALL DEFENDANTS)

24 222. Plaintiff realleges and incorporates the preceding paragraphs of this
25 Complaint as if they were fully set forth herein.

26 223. At all times herein mentioned, Plaintiff is informed and believes that the
27
28

1 AMN and WALMAR failed to execute and provide copies of a Written Loan
2 Brokerage Agreement to Plaintiff in violation of California Financial Code Section
3 50000 et seq.

4 224. The statute of limitations for this Second Cause of Action is subject to
5 equitable tolling upon the pleading of fraud. Due to Defendants' fraudulent actions,
6 the Statute of Limitations period has not yet expired.

7 225. As a result of the said Defendants' acts, Plaintiff has suffered damages in an
8 amount to be proven at trial.

- 9 1. Defendant AMN and WALMAR failed to provide a Good Faith
10 Estimate in the time and manner as required by the Real Estate and
11 Settlement Procedures Act.
- 12 2. Defendant AMN's conduct as holding the pre-sold loan for RFC
13 amounts to acting as a straw man for which the borrower received no
14 value.
15
- 16 3. Defendants' misconduct was concealed from Plaintiff, which
17 prevented her from readily discovering the misconduct, which she
18 was duly diligent in attempting to ascertain.
19
20

21
22 **THIRD CAUSE OF ACTION**
23 **VIOLATION OF CALIFORNIA CIVIL CODE SECTION 1916.7(10)**
24 **(AGAINST ALL DEFENDANTS)**

25 226. Plaintiff realleges and incorporates the preceding paragraphs of this
26 Complaint as if they were fully set forth herein.
27
28

1 227. California Civil Code Section 1916.7 provides that a lender must provide a
2 consumer with appropriate disclosures regarding the consumer's adjustable rate
3 loan. These disclosures include but are not limited to:

- 4 a. term of the loan;
- 5 b. payment adjustments;
- 6 c. monthly installments;
- 7 d. interest rate changes;
- 8 e. prepayment of the loan; and
- 9 f. written disclosure which includes the appropriate index within which the loan
10 interest will be measured by.

11 228. At all times herein mentioned, Plaintiff is informed and believes and thereon
12 allege that WALMAR and AMN violated California Civil Code Section 1916.7
13 (10) (c) by failing to provide Plaintiff with a disclosure regarding adjustable rate
14 mortgages.

15 229. Due to WALMAR and AMN's violation of California Code Section 1916.7
16 and TILA, Plaintiff was precluded from shopping around for a more competitively
17 priced loan, was deprived of an opportunity to make an informed decision as to
18 which loan product if any was suitable for her, and was not able to reasonably
19 decipher terms in her loan contract.

20 230. Pursuant to California Civil Code Section 1916.7, the interest rate of an
21 adjustable-payment, adjustable-rate mortgage loan must correspond directly to the
22 movement of an index which is selected but not controlled by the lender.

23 231. At all times herein mentioned, Plaintiff is informed and believes and thereon
24 allege that WALMAR and AMN intentionally restricted the downward adjustment
25 of Plaintiff's adjustable-rate mortgage loan regardless of the downward movement
26 of the index.

27 232. WALMAR and AMN's restriction of the downward adjustment regardless of
28 the downward movement of the index violates California Civil Code Section
1916.7 10 (c) II.

233. Pursuant to California Civil Code Section 1916.7, a lender is precluded from
charging a consumer a prepayment penalty if the borrowers prepay their loan in
whole or in part.

1 234. At all times herein mentioned, Plaintiff is informed and believes and thereon
2 alleges that WALMAR and AMN included a prepayment penalty in Plaintiff's
3 Adjustable Rate Loan in violation of California Civil Code Section 1916.7 (a) (8).

4 235. As a result of the WALMAR and AMN's acts, (1) Plaintiff has suffered
5 damages in an amount to be proven at trial and (2) Plaintiff is entitled to attorney's
6 fees, costs and statutory damages consisting of double the correctly calculated
finance charge.

7
8
9 **FOURTH CAUSE OF ACTION**
10 **VIOLATION OF EQUAL CREDIT OPPORTUNITY ACT**
11 **15 U.S.C. SECTION 1691**
12 **(AGAINST ALL DEFENDANTS)**

13 236 Plaintiff realleges and incorporates the preceding paragraphs of this
14 Complaint as if they were fully set forth herein.

15 237. At all times herein mentioned, Plaintiff is informed and believes and thereon
16 alleges that the WALMAR and AMN violated the Equal Credit Opportunity Act
17 by failing to make Plaintiff's credit scores available to her to ensure that they are
18 offered the same terms of credit issuance that other borrowers of equal
19 characteristics are entitled to.

20 238. Plaintiffs upon information and belief assert that as a result of WALMAR and
21 AMN's failure to disclose, Plaintiff was assessed higher credit charges than
22 similarly situated borrowers each time Plaintiff made a loan payment. Plaintiff
thus suffered continuing discriminatory practices.

23 239. As a result of the Defendant's acts, Plaintiff has suffered damages in an
24 amount to be proven at trial.

FIFTH CAUSE OF ACTION

**VIOLATION OF THE REAL ESTATE SETTLEMENT PRACTICES ACT
12 U.S.C. SECTION 2601
(AGAINST ALL DEFENDANTS)**

240. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

241. The Subject Loan is a mortgage loan subject to the provisions of the Real Estate Settlement Procedures Act set forth at 12 U.S.C. Section 2605 et seq. ("RESPA").

242. RESPA provides that in a residential mortgage a creditor shall make good faith estimates of loan disclosures before consummation of a loan or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application whichever is earlier. The purpose of RESPA is to ensure that borrowers are provided with a Standard Good Faith Estimate that clearly discloses key loan terms and closing costs.

243. A violation of RESPA is also made unlawful under California state law by Financial Code Section 50505, which states, "Any person who violates any provision of RESPA or any regulation promulgated thereunder, violates this division [California Residential Mortgage Lending Act]."

244. WALMAR and AMN violated RESPA at the time of closing the Subject Loan by failing to properly and accurately comply with disclosure requirements.

245. WALMAR and AMN failed to disclose all affiliated business arrangements to Plaintiff.

246. The statute of limitations for this Fourth Cause of Action is subject to equitable tolling upon the pleading of fraud. Due to Defendants' fraudulent actions, the Statute of Limitations period has not yet expired.

247. As a direct and proximate result of WALMAR and AMN's failure to comply with RESPA, Plaintiff has suffered and continues to suffer damages and costs of suit. Plaintiff is entitled to recover statutory damages, actual damages in an amount to be determined at trial, costs and reasonable attorney's fees incurred herein.

SIXTH CAUSE OF ACTION

**VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, et seq.
(AGAINST ALL DEFENDANTS)**

248. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

249. The instant claim is predicated on the generally applicable duty of any contracting party to not omit material facts, and on the duty to refrain from unlawful, unfair and deceptive business practices. Plaintiff hereby seeks to enforce a general proscription on unfair business practices and the requirement to refrain from deceptive conduct. The instant claim is predicated on duties that govern anyone engaged in any business and anyone contracting with anyone else.

250. Plaintiff is a consumer who applied for a mortgage loan through AMN. The Loan Documents were pre-approved by RFC and, in each case, the Loan Documents failed to disclose and omitted material information that was known only to RFC and other participants in the scheme, and that could not reasonably have been discovered by Plaintiff set forth in the preceding causes of action.

251. Based on the Material Omissions and the other partially true statements and failures to disclose in the Loan Documents as alleged herein, Plaintiff agreed to finance her home through the subject Option ARM loan, and has actually been harmed.

252. RFC pre-approved the Loan Documents and would only purchase Option ARM loans from AMN that complied with the policies and procedures set forth in the RFC Client Guide. The Loan Documents were designed to mislead Plaintiff into believing that if she made payments based on the payment schedules provided to her before she entered into the subject loan, the principal balance would be reduced with each payment when it actually increased with each payment.

253. RFC pre-approved the Note, which set forth a teaser rate that was only in effect for 30 days and the TILDS which set forth payments based upon those teaser rates for the first three to five years of the loan. RFC knew, but the Loan Documents did not clearly disclose that these listed low payments in the TILDS were predicated on an interest rate which would not, in fact, exist after the first thirty days. RFC further knew, but the Loan Documents did not disclose, that negative amortization was *guaranteed* if Plaintiff made these listed low payments. RFC further knew, but the Loan Documents did not disclose, that the listed

1 payments set forth in the TILDS were calculated such that, if the payments were
2 made, borrowers actually would be paying off 115% of the original principal
3 balance. This information was material to any reasonable borrower, and the
4 omission of such material information would cause a reasonable borrower to
5 believe that the fully amortizing payments shown on the TILDS were in fact those
6 payments necessary to pay off the balance of the original amount financed (*i.e.*, the
7 original principal balance less principal payments made on account of that
8 balance), rather than 115% of the amount financed.

7 254. RFC provided a stream of funding to AMN that enabled AMN to originate the
8 subject Option ARM loans. As AMN did not fund the loans it originated, it relied
9 on warehouse lenders such as RFC to provide warehouse lines of credit that it used
10 to originate Option ARM loans. RFC also provided day-to-day financing to AMN
11 under the Client Contract between RFC and AMN. Pursuant to that agreement,
12 RFC agreed to purchase Option ARM loans from AMN provided that AMN
13 complied with RFC's policies and procedures as set forth in the RFC Client
14 Guide.

13 255. By engaging in the above-described acts and practices, Defendants has
14 committed one or more acts of unfair competition within the meaning of UCL.

15 256. Defendants misconduct, as alleged herein, gave it an unfair competitive
16 advantage over their competitors.

17 257. Unlawful: The unlawful acts and practices of Defendants alleged above
18 constitute unlawful business acts and/or practices within the meaning of UCL.
19 Defendants unlawful business acts and/or practices as alleged herein violated the
20 Federal Trade Commission Act, 15 U.S.C. § 45, *et seq.*, because at all times
21 relevant, Defendants misconduct and omissions alleged herein caused:
22 i) substantial injury to Plaintiff and the public, ii) had no countervailing benefit to
23 consumers or to competition that could possibly outweigh this substantial injury;
24 and iii) caused injury that could not have been avoided or even discovered by
25 ordinary consumers, because it resulted from Defendants failure to disclose and/or
26 omission of material information that only Defendants knew or could have known.

25 258. Plaintiff has incurred substantial financial injury because she has lost
26 substantial equity in her home due to the Option ARM loan scheme. There is no
27 countervailing benefit to consumers or competition that outweighs this substantial
28 injury. Plaintiff could not have avoided the substantial injury because RFC had
exclusive knowledge of the material facts but actively concealed these material

1 facts from Plaintiff through The Material Omissions. Thus, Defendants acts and/or
2 practices as alleged herein were unlawful within the meaning of Bus. & Prof. Code
3 17200, *et seq.*

4 259. Unfair: Defendants misconduct as alleged herein was unfair because it
5 offends established public policy or is immoral, unethical, oppressive,
6 unscrupulous or substantially injurious to consumers.

7 260. Defendants misconduct as alleged herein was unfair because it is contrary to
8 the public policy expressed in the UCL to protect consumers from ongoing
9 wrongful business conduct in whatever context such activity may occur.

10 261. Defendants' misconduct as alleged herein was unfair because (i) it caused
11 Plaintiff substantial injury by, among other things, causing her to lose equity in her
12 home, (ii) there were absolutely no countervailing benefits to consumers or to
13 competition that could possibly outweigh this substantial injury, and (iii) this
14 injury could not have been avoided or even discovered by the consumers, because
15 it resulted from Defendants' failure to disclose and/or omission of material
16 information in the Loan Documents that only Defendants and other participants in
17 the scheme knew or should have known.

18 262. Plaintiff has been substantially injured because she has lost substantial equity
19 in her home due to the Option ARM loan scheme. Defendants' misconduct as
20 alleged herein is contrary to the public policy expressed in the UCL because the
21 Loan Documents approved by Defendants failed to disclose important material
22 facts concerning Plaintiff's Option ARM loan, including that negative amortization
23 was absolutely guaranteed to occur if Plaintiff made payments according to the
24 payment schedule provided in the Note and TILDS. There is no countervailing
25 benefit to consumers or competition that outweighs the substantial injury Plaintiff
26 has suffered. Plaintiff could not have avoided the substantial injury because
27 Defendants had exclusive knowledge of the material facts but actively concealed
28 these material facts from Plaintiff through The Material Omissions. Thus,
29 Defendants' acts and/or practices as alleged herein were unfair within the meaning
30 of Cal. Bus. & Prof. Code § 17200, *et seq.*

31 263. Fraudulent: Through its omissions and/or acts, practices and non-disclosures
32 as alleged herein, RFC pre-approved the Loan Documents that AMN used to
33 originate the subject Option ARM loans in order to deceive the public through The
34 Material Omissions leading to consumer confusion, including, but not limited to
35 the fact that, for the first three to five years, the loans were negatively amortizing

1 loans. Said omissions, acts, practices and non-disclosures as alleged herein
2 therefore constitute fraudulent business acts and/or practices within the meaning of
3 UCL.

4 264. Defendants' conduct, as fully described above, was designed to and was
5 therefore likely to deceive members of the consuming public, and at all times,
6 Defendants' participation in the scheme alleged herein that allowed those
7 documents to be delivered to Plaintiffs, have been and continue to be unfair,
8 fraudulent, untrue and/or deceptive.

9 265. As a direct and proximate result of the aforementioned omissions, acts and
10 practices, Defendants received monies and continue to hold the monies expended
11 by Plaintiff similarly situated who purchased the Option ARM loan as described
12 herein.

13 266. The unfair, deceptive and/or fraudulent business practices of Defendants, as
14 fully described herein, present a continuing threat to members of the public to be
15 misled and/or deceived by the Loan Documents at issue, as described herein.
16 Plaintiff and the general public have no other remedy of law that will prevent
17 Defendants misconduct as alleged herein from occurring and/or reoccurring in the
18 future.

19 267. Plaintiff is informed and believes, and thereon alleges, that WALMAR, RFC
20 and AMN, committed unlawful, unfair and/or fraudulent business practices, as
21 defined by California Business and Professions Code Section 17200, by engaging
22 in unlawful, unfair, and fraudulent business practices as alleged throughout this
23 complaint. This includes but is not limited to predatory lending practices such as:

24 a. Failure to exercise due diligence regarding underwriting standards and
25 Plaintiff's ability to repay the adjustable rate mortgage.

26 b. Offering Plaintiff an adjustable rate mortgage despite Plaintiff not being able to
27 afford the loan under a debt ratio analysis.

28 c. Offering Plaintiff an adjustable rate mortgage despite Plaintiff not being able to
afford the loan under a stated income analysis.

- 1 d. Failure to use a realistic means test to determine whether Plaintiff could afford
- 2 the adjustable rate mortgage at the qualified initial rate and fully indexed and
- 3 amortized rate.
- 4 e. Failure to verify Plaintiff's income with income verification documents.
- 5 f. Overstating Plaintiff's income, assets and debts on the loan documents.
- 6 g. Failure to demand Plaintiff's proof of employment.
- 7 h. Failure to perform a Debt and Real Income analysis to determine if Plaintiff
- 8 could afford her adjustable rate mortgage loan payments.
- 9 i. Stating the Plaintiff's income and assets in the loan application preventing a final
- 10 determination as to whether Plaintiff qualified for the adjustable rate mortgage.
- 11 j. Placing Plaintiff in a loan whereby it was likely that she would default or incur
- 12 bankruptcy as a result of the loan and it was reasonably foreseeable that such
- 13 would occur.
- 14 k. Placing Plaintiff in a loan that they could not afford to pay.
- 15 l. Placing Plaintiff in a loan with no tangible benefit to her.
- 16 m. Failure to provide Plaintiff with a lender broker agreement.
- 17 n. Engaging in aggressive marketing of credit to prospective borrowers like
- 18 Plaintiff who cannot afford credit on the terms being offered.
- 19 o. Extending credit to Plaintiff based on the liquidation value of the collateral
- 20 rather than Plaintiff's ability to pay.
- 21 p. Requiring Plaintiff to pay interest rates, fees and/or other charges not justified by
- 22 marketplace economics in place at the time that the adjustable rate mortgage was
- 23 created.
- 24 q. Approving Plaintiff's loan with a high debt ratio without determining Plaintiff's
- 25 ability to repay the loan.
- 26 r. Approving Plaintiff for an adjustable rate mortgage where she has little or no
- 27 equity in her home precluding her from refinancing when the rate adjusts because
- 28 of Plaintiff's lack of equity.

- s. Approving Plaintiff for an adjustable rate mortgage loan where she qualified at the initial teaser fixed rate only.
 - t. Marketing the adjustable rate mortgage to Plaintiff and other borrowers to avoid disclosure of all material terms.
 - u. Utilizing a stated-income loan application for Plaintiff when she had the ability to obtain income verification documents.
 - v. Failure to use due diligence in underwriting the loan.
 - w. Offering borrowers such as Plaintiff a loan program materially more expensive in terms of fees, charges, and/or interest rates than alternative financing for which the borrower qualifies.
 - x. Incorporating pre-dispute, mandatory, binding arbitration clauses which limit the rights of borrowers such as Plaintiff to seek relief through the judicial process for any and all claims and defenses the borrower may have against the mortgage lender, mortgage broker or other party involved in the loan transaction.
 - y. Badgering homeowners such as Plaintiff with advertisements and solicitations that tout the benefits of consolidating bills into a mortgage loan increasing the risk of foreclosures and length of time to pay off the debt.
 - z. Engaging in equity stripping by removing the equity from Plaintiff's home through repeated refinances.
 - aa. Violation of RESPA at the time of closing the Subject Loan by failing to properly and accurately comply with disclosure requirements.
 - bb. Failure to disclose the relationship between the mortgage broker and lender.
 - cc. Committing forgery and falsifying income on Plaintiff's Loan application.
268. Broker and Lenders' practices violate TILA Section 226.34 by failing to carefully consider consumers repayment ability and by failing to make the appropriate disclosures under TILA and the Real Estate Settlement Practices Act.

1 269. As a result of Defendants' actions, Plaintiff is entitled to TILA and RESPA
2 damages. Also, Plaintiffs are entitled to actual damages pursuant to California
3 Business and Professions Code Section 17200.

4
5 270. As a direct result of Defendants' acts, Plaintiff has incurred actual damages
6 consisting of mental and emotional distress, nervousness, grief, embarrassment,
7 loss of sleep, anxiety, worry, mortification, shock, humiliation, indignity, pain and
8 suffering, and other injuries.

9
10 271. Plaintiff has incurred out of pocket monetary damages.

11
12 272. Plaintiff continues to incur monetary damages.

13
14 273. Plaintiff will incur the loss of her personal residence if a non-judicial
15 foreclosure is allowed to proceed.

16
17 274. Each of Defendants' harassing acts were so willful, vexatious, outrageous,
18 oppressive, and maliciously calculated enough, so as to warrant statutory penalties
19 and punitive damages. Plaintiffs request rescission of the foreclosure.

20
21 275. As a direct and proximate result of Defendants' unfair and/or fraudulent
22 conduct alleged herein, Plaintiff and others have lost hundreds of thousands if not
23 millions of dollars of equity in their homes. Plaintiff is a direct victim of
24 Defendants' unlawful conduct, and has suffered injury in fact, and has lost money
25 as a result of Defendants' unfair competition.

26 276. WHEREFORE, Plaintiff is entitled to equitable relief, including restitution,
27 restitutionary disgorgement of all profits accruing to Defendants because of its
28 unfair, fraudulent, and deceptive acts and/or practices, attorney's fees and costs,

1 declaratory relief, and a permanent injunction enjoining Defendants from its unfair,
2 fraudulent and deceitful activity.

3
4 **SEVENTH CAUSE OF ACTION**
5 **Violation Of Civil Code §1572**
6 **(AGAINST ALL DEFENDANTS)**

7
8 277. Plaintiff realleges and incorporates the preceding paragraphs of this
9 Complaint as if they were fully set forth herein.

10
11
12 278. The misrepresentations by Defendants' and/or Defendants' predecessors,
13 failures to disclose, and failure to investigate as described above were made with
14 the intent to induce Plaintiff to obligate herself on the Loan in reliance on the
15 integrity of Defendants and/or Defendants' predecessors.

16
17
18
19 279. Plaintiff is an unsophisticated customer whose reliance upon Defendants
20 and/or Defendants' predecessors was reasonable and consistent with the
21 Congressional intent and purpose of *California Civil Code § 1572* enacted in 1872
22 and designed to assist and protect consumers similarly situated as Plaintiff in this
23 action.
24
25
26
27
28

1 280. As an unsophisticated customer, Plaintiff could not have discovered the true
2 nature of the material facts on her own.
3
4

5 281. The accuracy by Defendants and/or Defendants' predecessors of
6 representation is important in enabling consumers such as Plaintiff to compare
7 market lenders in order to make informed decisions regarding lending transactions
8 such as a loan.
9
10
11

12 282. Plaintiff was ignorant of the facts which Defendants and/or Defendants'
13 predecessors misrepresented and failed to disclose.
14
15

16 283. Plaintiff's reliance on Defendants and/or Defendants' predecessors was a
17 substantial factor in causing her harm.
18
19
20

21 284. Had the terms of the Loan been accurately represented and disclosed by
22 Defendants and/or Defendants' predecessors, Plaintiff would not have accepted the
23 Loan nor been harmed.
24
25
26
27
28

1 285. Had Defendants and/or Defendants' predecessors investigated Plaintiff's
2 financial capabilities, they would have been forced to deny Plaintiff on this
3 particular loan.
4

5
6 286. Defendants and/or Defendants' predecessors conspired and agreed to
7 commit the above- mentioned fraud.
8

9
10 287. As a proximate result of Defendants and or Defendants' predecessors fraud,
11 Plaintiff has suffered damage in an amount to be determined at trial.
12

13
14
15 288. The conduct of Defendants and/or Defendants' predecessors as mentioned
16 above was fraudulent within the meaning of *California Civil Code § 3294(c)(3)*,
17 and by virtue thereof Plaintiff is entitled to an award of punitive damages in an
18 amount sufficient to punish and make an example of the Defendants.
19

20
21
22 **EIGHTH CAUSE OF ACTION**
23 **INTENTIONAL MISREPRESENTATION**
24 **(AGAINST ALL DEFENDANTS)**

25 289. Plaintiff realleges and incorporates the preceding paragraphs of this
26 Complaint as if they were fully set forth herein.

27 290. As alleged herein, Broker and Lender have made several representations to
28 Plaintiff regarding material facts concerning the Subject Loan and the subject
property. Broker and Lender furthermore fraudulently and with intent concealed

1 and omitted key terms of the Subject Loan agreement, including but not limited to
2 the nature of the adjustable interest rate.

3 291. Broker and Lender representations concerning the Subject Loan and the
4 subject property were material to Plaintiff's decision to finance the subject
5 property and make monthly payments in connection with the Subject Loan, and
6 these representations were false.

7 292. Broker and Lender made the representations to Plaintiff with knowledge of
8 their falsity or with reckless disregard for their truth or falsity.

- 9 1. During the time of the loan application, Defendants misrepresented to
10 Plaintiff (a) her ability to repay the loan and (b) her qualifications for
11 the loan in the amount of \$556,000.00.
- 12 2. During the time of the closing, Defendants misrepresented to Plaintiff
13 (a) her ability to repay the loan; (b) her qualifications for the loan in
14 the amount of \$556,000.00; (c) the identity of the recipients of fees to
15 be paid on the HUD-1; (d) the fees that AMN was paid by RFC; (e)
16 that her loan was pre-sold to RFC and (f) that the price of her loan
17 was based on an inflated appraisal report.
- 18 3. Defendants made these misrepresentations knowing they were false,
19 with the purpose of inducing Plaintiff to obtain credit from AMN.
- 20 4. Defendants had an obligation to disclose the truth.
- 21 5. Plaintiff relied on these misrepresentations and had the right to do so.
- 22 6. These misrepresentations denied Plaintiff the opportunity to find
23 cheaper credit and/or a non-predatory loan. As a result, she has been
24
25
26
27
28

1 injured in that she paid more for the credit she was defrauded into
2 obtaining and that her predatory loan was the proximate cause of her
3 pending foreclosure.
4
5
6
7

8 **NINTH CAUSE OF ACTION**
9 **FRAUDULENT CONCEALMENT**
10 **(AGAINST ALL DEFENDANTS)**

11 293. Plaintiff realleges and incorporates the preceding paragraphs of this
12 Complaint as if they were fully set forth herein.

13 294. Defendant Broker and Lender owed a legal duty to disclose certain documents
14 and facts related to the Subject Loan.

15 295. Broker and Lender fraudulently and with intent concealed and omitted key
16 terms of the Subject Loan agreement, including but not limited to the nature of the
17 adjustable interest rate. Considering Broker and Lender's bargaining position and
18 knowledge of the nature of the adjustable rate mortgage, Plaintiff could not
19 reasonably obtain the concealed information from third party sources.

20 296. Defendants' intentional omissions concerning the Subject Loan and the
21 subject property were material to Plaintiff's decision to finance the subject
22 property and make monthly payments in connection with the Subject Loan.

23 297. Broker and Lender concealed information regarding the Subject Loan with
24 knowledge and the intent to deceive Plaintiff and to induce them into
25 consummating the Subject Loan.

26 298. Plaintiff was induced to her detriment to proceed to closing on the Subject
27 Loan.

28 299. But for Broker and Lender's omissions, Plaintiff would not have
consummated the Subject Loan.

1 300. As a result of Broker and Lender's fraudulent concealment and omissions,
2 Plaintiff has been injured in an amount in excess of this Court's jurisdictional
3 minimum, which amount will be proven at trial.

4 301. Broker and Lender's conduct was willful, oppressive and fraudulent, and an
5 award of punitive damages is justified in an amount to be determined at trial.

6 302. As a result of the above-alleged misconduct, Plaintiff has been required to
7 commence and prosecute this action, and may incur attorney's fees and costs in an
8 amount to be proven at trial. Pursuant to the controlling contractual document(s)
9 and/or applicable law, Plaintiff is entitled to recover their costs and reasonable
10 attorneys' fees.

- 11 1. During the time of the loan application, Defendants misrepresented to
12 Plaintiff (a) her ability to repay the loan and (b) her qualifications for
13 the loan in the amount of \$556,000.00.
 - 14 2. During the time of the closing, Defendants misrepresented to Plaintiff
15 (a) her ability to repay the loan; (b) her qualifications for the loan in
16 the amount of \$556,000.00; (c) the identity of the recipients of fees to
17 be paid on the HUD-1; (d) the fees that AMN was paid by RFC; (e)
18 that her loan was pre-sold to RFC and (f) that the price of her loan
19 was based on an inflated appraisal report.
 - 20 3. Defendants made these misrepresentations knowing they were false,
21 with the purpose of inducing Plaintiff to obtain credit from AMN.
 - 22 4. Defendants had an obligation to disclose the truth.
 - 23 5. Plaintiff relied on these misrepresentations and had the right to do so.
- 24
25
26
27
28

1 6. These misrepresentations denied Plaintiff the opportunity to find
2 cheaper credit and/or a non-predatory loan. As a result, she has been
3 injured in that she paid more for the credit she was defrauded into
4 obtaining and that her predatory loan was the proximate cause of her
5 pending foreclosure.
6

7
8 **TENTH CAUSE OF ACTION**
9 **NEGLIGENT MISREPRESENTATION**
10 **(AGAINST ALL DEFENDANTS)**

11 303. Plaintiff realleges and incorporates the preceding paragraphs of this
12 Complaint as if they were fully set forth herein.

13 304. As alleged herein, Broker and Lender have made several representations to
14 Plaintiff regarding material facts concerning the Subject Loan and the subject
15 property.
16 Broker and Lender furthermore fraudulently and with intent concealed and omitted
17 key terms of the Subject Loan agreement, including but not limited to the nature of
18 the adjustable interest rate.

19 305. Broker and Lender's representations concerning the Subject Loan and the
20 subject property were material to Plaintiff's decision to refinance the subject
21 property and make monthly payments in connection with the Subject Loan, and
22 these representations were false.

23 306. Broker and Lender made the representations to Plaintiff with knowledge of
24 their falsity, with reckless disregard for their truth or falsity, or without a
25 reasonable basis to believe that they were true and with the knowledge or
26 expectation that Plaintiff would rely on the representations.

27 307. Broker and Lender made the representations to Plaintiff with the knowledge
28 and intent that Plaintiff would rely on the representations and with the intent to
29 deceive Plaintiff and to induce them into consummating the Subject Loan.

1 308. In reasonable and justifiable reliance on Broker and Lender's representations,
2 and without knowledge of their falsity, Plaintiff was induced to her detriment to
3 proceed to closing on the Subject Loan.

4 309. But for said Defendants' representations, Plaintiff would not have
5 consummated the Subject Loan.

6 310. As a result of said Defendants' intentional and fraudulent misrepresentations
7 and Plaintiffs' reasonable and justifiable reliance thereon, Plaintiffs have been
8 injured in an amount in excess of this Court's jurisdictional minimum, which
9 amount will be proven at trial.

10 311. Defendants' conduct was willful, oppressive and fraudulent, and an award of
11 punitive damages is justified in an amount to be determined at trial.

12 312. As a result of the above-alleged misconduct, Plaintiff has been required to
13 commence and prosecute this action, and may incur attorney's fees and costs in an
14 amount to be proven at trial. Pursuant to the controlling contractual document(s)
15 and/or applicable law, Plaintiff is entitled to recover their costs and reasonable
16 attorneys' fees.

17 1. During the time of the loan application, Defendants misrepresented to
18 Plaintiff (a) her ability to repay the loan and (b) her qualifications for
19 the loan in the amount of \$556,000.00.

20 2. During the time of the closing, Defendants misrepresented to Plaintiff
21 (a) her ability to repay the loan; (b) her qualifications for the loan in
22 the amount of \$556,000.00; (c) the identity of the recipients of fees to
23 be paid on the HUD-1; (d) the fees that AMN was paid by RFC; (e)
24 that her loan was pre-sold to RFC and (f) that the price of her loan
25 was based on an inflated appraisal report.
26
27
28

- 1 3. Defendants made these misrepresentations knowing they were false,
- 2 with the purpose of inducing Plaintiff to obtain credit from AMN.
- 3
- 4 4. Defendants had an obligation to disclose the truth.
- 5
- 6 5. Plaintiff relied on these misrepresentations and had the right to do so.
- 7
- 8 6. These misrepresentations denied Plaintiff the opportunity to find
- 9 cheaper credit and/or a non-predatory loan. As a result, she has been
- 10 injured in that she paid more for the credit she was defrauded into
- 11 obtaining and that her predatory loan was the proximate cause of her
- 12 pending foreclosure.
- 13
- 14

15 **ELEVENTH CAUSE OF ACTION**
16 **Breach of Contract**
17 **(AGAINST ALL DEFENDANTS)**

18 313. Plaintiff realleges and incorporates the preceding paragraphs of this
19 Complaint as if they were fully set forth herein.

20 314. On December 2, 2006, Plaintiffs executed a note, a deed of trust and other
21 related documents to borrow \$556,000.00, secured by the subject property
22 (hereinafter the "Subject Loan"). The terms of the loan were memorialized in a
23 promissory note which was in turn secured by a deed of trust on the subject
24 property. The deed of trust identified AMN as the lender. The deed of trust
25 identified First American as the Title Insurer/Escrow Holder/Trustee. The deed of
26 trust identified WALMAR as the mortgage broker. The deed of trust further
27 identified MERS as the nominal beneficiary.
28

1 315. Plaintiffs fully and faithfully performed all of the covenants, terms,
2 conditions, and obligations required under the loan agreement for the Subject Loan
3 on her part to be performed.

4
5 316. Broker and Lenders breached their agreement by, among other things, failing
6 to provide Plaintiffs with required disclosures.

7
8 317. As a result of said Broker and Lenders' breach of the Subject Loan agreement
9 in connection with the Subject Loan, Plaintiffs' home has been foreclosed upon.

10
11 318. As a direct and proximate result of Broker and Lenders' breaches of the
12 Subject Loan agreement, Plaintiffs have suffered damages in an amount in excess
13 of this Court's jurisdictional minimum, which amount will be proven at trial.

14
15 319. Plaintiffs further seeks, as a result of said defendants' breaches of the Subject
16 Loan agreement, restitution, disgorgement of sums wrongfully obtained, costs of
17 suit, reasonable attorney's fees, and such other and further relief as the Court may
18 deem just and proper.

19
20 320. The Plaintiff's loan agreement set forth conditions under which the deed of
21 trust could be assigned or transferred.

22 321. Defendants violated those conditions in successive, illegal attempts to assign
23 the Trust Deed to third parties.

24 322. As a proximate result of the Defendants' breaches, the Plaintiff has suffered
25 compensatory damages in an amount to be proven at trial.

26
27 **TWELFTH CAUSE OF ACTION**
28 **Breach of Implied Covenant of Good Faith and Fair Dealing**
(AGAINST ALL DEFENDANTS)

1 323. Plaintiff realleges and incorporates the preceding paragraphs of this
2 Complaint as if they were fully set forth herein.

3
4 324. California law inserts an implied covenant of good faith and fair dealing into
5 every contract. The documents in connection with the Subject Loan including,
6 without limitation, the Subject Loan agreement, promissory note and deed of trust,
7 all therefore include an implied covenant of good faith and fair dealing.

8
9 325. A party to a contract breaches the implied covenant of good faith and fair
10 dealing by interfering with or failing to cooperate with the plaintiff in the
11 performance of the contract.

12
13 326. At all times relevant herein, Broker and Lenders agreed to act in good faith
14 and deal fairly with Plaintiffs upon entering into the Subject Loan and accepted
15 payments from Plaintiffs.

16
17 327. Broker and Lenders breached the implied covenant of good faith and fair
18 dealing by:

- 19 a. Failing to disclose key terms, including but not limited to the nature of the
20 adjustable interest rate.
21 b. Failing to reasonably evaluate Plaintiffs' ability to pay or perform.
22 c. Providing Plaintiffs the Subject Loan with knowledge of Plaintiffs' inability to
23 pay or perform.

24
25 328. Plaintiff is informed and believes that Defendants have profited from the
26 Subject Loan transaction with Plaintiff and will profit from non-performance of the
27 Subject Loan.
28

1 329. Plaintiff, on information and belief, alleges that Broker and Lenders executed
2 the Subject Loan with disregard for Plaintiff's ability to perform. Defendants,
3 beyond failing to cooperate with Plaintiff's performance, instead intended for or
4 anticipated Plaintiff's nonperformance. Broker and Lenders, in bad faith, entered
5 the Subject Loan in anticipation of non-performance and foreclosure.

6
7 330. Plaintiff is informed and believes, and thereon alleges, that Defendants have a
8 pattern and practice of similar bad faith conduct toward other borrowers in similar
9 situations.

10
11 331. The statute of limitations for this Twelfth Cause of Action is subject to
12 equitable tolling upon the pleading of fraud. Due to Defendants' fraudulent actions,
13 the Statute of Limitations period has not yet expired.

14
15 332. As a proximate result of Defendants' breaches of the covenant of good faith
16 and fair dealing alleged herein, Plaintiffs have suffered damages, incurred
17 attorneys' fees and costs, emotional distress and other economic losses and
18 damages in an amount in excess of this Court's jurisdictional minimum, which
19 amount will be proven at trial.

20
21 333. Defendants pursued said course of conduct intentionally and maliciously and
22 in conscious disregard of the rights of Plaintiffs and their economic interests.
23 Further Defendants' actions were made with the intent to intimidate, vex and
24 harass Plaintiffs, so as to discourage them from pursuing their rights under the
25 Subject Loan. In order to deter such conduct or said defendants in the future and to
26 prevent repetition thereof as a practice, by way of punishment and as example.
27 Plaintiffs pray that exemplary damages be awarded according to proof at trial
28 pursuant to California Civil Code Section 3294.

1
2 334. Every contract imposes upon each party a duty of good faith and fair dealing
3 in its performance and its enforcement. This implied covenant of good faith and
4 fair dealing requires that no party will do anything that will have the effect of
5 impairing, destroying, or injuring the rights of the other party to receive the
6 benefits of their agreement. The covenant implies that in all contracts each party
7 will do all things reasonably contemplated by the terms of the contract to
accomplish its purpose. This covenant protects the benefits of the contract that the
parties reasonably contemplated when they entered into the agreement.

8 335. Alternatively, if the note and deed of trust was validly and properly assigned
9 to the Defendants, the Defendants did not act in good faith and did not deal fairly
10 with the Plaintiff in connection with the note and deed of trust when they: (1)
11 Illegally attempted to transfer the deed of Trust by assignments; (2) back dated
12 documents; (3) failed to notarize the Notice of Default and Election to sell; (4)
failed to notarize both Notice of Trustee's Sale documents;

13 336. The Defendants enjoyed substantial discretionary power affecting the rights
14 of the Plaintiff during the events alleged in this Complaint. They were required to
15 exercise such power in good faith.

16 337. The Defendants engaged in such conduct to drive the Plaintiff into
17 foreclosure so that they could acquire the Subject Property. These actions were a
18 bad faith breach of the contract between the Plaintiff and the Defendants which
19 show that they had no intention of performing the contract, consisting of the
original note and deed of trust, in good faith.

20 338. As a result of the Defendants' breaches of this covenant, the Plaintiff has
21 suffered general and special damages in an amount to be determined at trial.

22
23 **THIRTEENTH CAUSE OF ACTION**
24 **BREACH OF FIDUCIARY DUTY**
25 **(AGAINST ALL DEFENDANTS)**

26 339. Plaintiff realleges and incorporates the preceding paragraphs of this
27 Complaint as if they were fully set forth herein.
28

1 340. Broker and Lender offered their services as agents for the purpose of
2 providing Plaintiffs with the Subject Loan. As such, these Defendants were the
3 agents of Plaintiff.

4 341. Pursuant to the agreement to refinance the subject property and obtain the
5 Subject Loan, Plaintiff agreed to pay a commission from the proceeds of the loan.

6 342. Broker and Lender by and through their agents, owed a fiduciary duty to
7 Plaintiff to act primarily for their benefit, to act with proper skill and diligence, and
8 not to make a personal profit from the agency at the expense of its principal.

9 343. As Plaintiff's agents, Broker and Lender owed a duty of loyalty and duty to
10 deal fairly with Plaintiff at all times.

11 344. Broker and Lender willfully and intentionally breached their fiduciary
12 obligations and their duty of loyalty to Plaintiff by obtaining the Subject Loan with
13 unfavorable terms and for a self-serving purpose, knowing Plaintiff did not have
14 the financial means to ultimately make monthly payments in connection with the
15 Subject Loan. Further, Defendants breached their fiduciary duty and duty of
16 loyalty by not disclosing to Plaintiff, as required by federal law and state law, all
17 adverse consequences of the Subject Loan, by securing an undisclosed profit for
18 the sale and servicing of the Subject Loan in violation of TILA and RESPA,
19 among other statutes, and by engaging in unfair business practices.

20 345. As a direct and proximate result of Broker and Lender's breaches as alleged
21 herein, Plaintiff has been damaged and is entitled to actual damages.

22 346. Broker and Lender's willful, oppressive, intentional and malicious breaches of
23 fiduciary duty authorize the imposition of exemplary damages pursuant to
24 California Civil Code Section 3294.

25 **FOURTEENTH CAUSE OF ACTION**
26 **Fraudulent Omissions**
27 **(AGAINST ALL DEFENDANTS)**

28 347. Plaintiff realleges and incorporates the preceding paragraphs of this
Complaint as if they were fully set forth herein.

1 348. Under California law, the Loan Documents' partial representations that
2 omitted material facts, created a duty to disclose all material facts concerning
3 Plaintiff's Option ARM loan. Thus, the partial representations in the Loan
4 Documents created a duty to disclose to Plaintiff that: (i) the low interest rate in the
5 Note was only available for thirty days if at all; (ii) the monthly payment amounts
6 for the first three to five years provided to Plaintiff on the TILDS were insufficient
7 to pay both principal and interest; (iii) negative amortization was absolutely certain
8 to occur if Plaintiff made payments according to the payment schedule provided in
9 the Loan Documents; and that (iv) loss of equity and/or loss of Plaintiff's residence
10 was certain to occur if Plaintiff made payments according to the payment
11 schedule.

12 349. The Note at issue states: "I will make a payment every month" [and] "I will
13 make these payments every month until I have paid all the *Principal and Interest*
14 and any other charges described below that I may owe under this Note." (emphasis
15 added). The Note then states, while referencing the Payment Cap provision, that
16 "[t]his Payment Cap applies only to the *Principal and Interest* payment ..."
17 (emphasis added). And, under the heading "BORROWERS FAILURE TO PAY
18 AS REQUIRED," the Note state "[t]he amount of the charge will be 5.000% of my
19 overdue payment of *Principal and Interest*." (emphasis added). These partial
20 representations failed to disclose that the payment amounts prescribed in the Loan
21 Documents were certain to result in negative amortization. Had the Loan
22 Documents disclosed this information, Plaintiff would not have purchased the loan.

23 350. The Note further states: "For each month that my monthly payment is less
24 than the interest portion, the Note Holder will subtract the amount of my monthly
25 payment from the amount of the interest portion and will add the difference to my
26 unpaid principal, and interest will accrue on the amount of this difference at the
27 interest required by Section 2." However, the Loan Documents failed to disclose
28 the material fact that the payment schedules in the TILDS could not possibly cover
the amount of interest due under any conceivable index rate plus the margin after
the first thirty days. To be accurate and complete, the Notes should have disclosed
that if the borrower followed the payment schedules, the monthly payments would
not cover the amount of interest due and negative amortization would occur. Had
the Loan Documents disclosed this information, Plaintiff would not have
purchased the loans.

351. The Note further states, "my Minimum Payment could be less than or greater
than the amount of the amount of the interest portion of the monthly payment..."
(emphasis added). And, under "Payment Options" the Notes state: "Lender may

1 provide me with up to three (3) additional payment options that are greater than the
2 Minimum Payment..." However, the so called "Payment Options" that the lender
3 "may provide" were not disclosed to Plaintiff before they entered into the subject
4 Option ARM loan. It was only after Plaintiff entered into the loan that she was
5 provided crucial material information about the true cost of her loan, and by then,
6 it was too late as the borrower was already locked into the loan, which contained
7 heavy prepayment penalties. Had the Loan Documents disclosed this information,
8 Plaintiff would not have purchased the loans.

9 352. The Note further states, under "Amount of My Initial Monthly Payments"
10 "Each of my initial monthly payments until the first Payment Change Date will be
11" and then, under "Payment Change Dates" it states "My monthly payment *may*
12 *change...*" (emphasis added). However, under the terms of the subject Option ARM
13 loan, Plaintiff's loan "payment" was *absolutely guaranteed to go up the very next*
14 *month*. In particular, the Loan Documents failed to disclose and omitted the
15 material fact that while the initial monthly payment amount would remain
16 constant, the actual amount owed each month for the loan was absolutely
17 guaranteed to go up. Had the Loan Documents disclosed this information, Plaintiff
18 would not have purchased the loans.

19 353. RFC pre-approved the Note, which set forth a teaser rate that was only in
20 effect for 30 days and the TILDS which set forth payments based upon those teaser
21 rates for the first three to five years of the loan. RFC knew, but the Loan
22 Documents did not disclose, that these listed low payments in the TILDS were
23 predicated on an interest rate which would not exist after the first thirty days. RFC
24 knew, but the Loan Documents did not disclose, that negative amortization was
25 *guaranteed* if borrowers made these listed low payments. RFC further knew, but
26 the Loan Documents did not disclose, that the listed payments set forth in the
27 TILDS were calculated such that, if the payments were made, borrower would
28 actually be would be paying off 115% of the original principal balance. While
providing a stream of financing to AMN, RFC was aware of The Material
Omissions, and it approved the specific language that was used to create those
omissions. This information was material to any reasonable borrower, and the
omission of such material information would cause a reasonable borrower to
believe that the fully amortizing payments shown on the TILDS were in fact those
payments necessary to pay off the balance of the original amount financed (*i.e.*, the
original principal balance less principal payments made on account of that
balance), rather than 115% of the amount financed. Had the Loan Documents
disclosed this information, Plaintiff would not have purchased the loans.

1 354. Defendants are liable under this Cause of Action because they were aware of
2 The Material Omissions and provided a stream of funding to AMN that enabled
3 AMN to originate the subject Option ARM loan. This stream of funding provided
4 AMN with day-to-day financing in two ways:

5 a. First, AMN did not fund its own loan originations; rather it obtained the funds to
6 originate loans from warehouse lines of credit provided by RFC. After originating
7 a loan, AMN immediately sold it to RFC to be securitized in order to pay back the
8 line of credit that it used to fund the loan.

9 b. Second, AMN received day-to-day financing from RFC pursuant to the Client
10 Contract between AMN and RFC. Pursuant to that contract, RFC agreed to
11 purchase Option ARM loans originated by AMN provided that the loans complied
12 with the standards set forth in RFC's Client Guide. Thus, the Client Contract
13 guaranteed that AMN would have an immediate buyer for the Option ARM loans it
14 originated.

15 355. At all times relevant, RFC and other participants in the scheme had exclusive
16 knowledge of these material facts, but actively concealed the material facts from
17 Plaintiff. In those cases where the Loan Documents did make some disclosures
18 about the "subjects" at issue, the Loan Documents made only partial
19 representations while suppressing material facts, as alleged herein. The Loan
20 Documents' concealment, omissions and partial representations occurred prior to
21 the consummation of the loan transactions with Plaintiff. Plaintiffs not presently
22 aware of the identities of all the specific executives and employees responsible for
23 the fraudulent scheme at issue; however, Defendants know such facts, which can
24 be determined in discovery.

25 356. The omitted information, as alleged herein, was objectively material to both
26 the interest rate and the amount of payments, which are the two most important
27 features of any mortgage loan. Had the Loan Documents disclosed this
28 information, Plaintiff would not have purchased the loans.

357. As a direct and proximate result of the Loan Documents' failures to disclose
and omission of material facts, as alleged herein, Plaintiff have suffered damages,
including but not limited to, the loss of equity in their homes.

358. The wrongful conduct of RFC and Doe Defendants, as alleged herein,
including RFC and Doe Defendants placing their corporate and/or individual
profits over the rights of others, was willful, oppressive, immoral, unethical,
unscrupulous, substantially injurious, malicious and in conscious disregard for the
well being of Plaintiff, and particularly vile, base, contemptible, and wretched.

1 Such acts and/or omissions were performed on the part of officers, directors,
2 and/or managing agents of each corporate defendant and/or taken with the advance
3 knowledge of the officers, directors, and/or managing agents who authorized
4 and/or ratified said acts and/or omissions. RFC and Doe Defendants thereby acted
5 with malice and complete indifference to and/or conscious disregard for the rights
6 and safety of others, including Plaintiff and the general public. Accordingly,
7 Plaintiff are entitled to an award of punitive damages against RFC in an amount to
8 deter them from similar conduct in the future.

9 **A. Plaintiffs' Fraudulent Omissions Claims Against Defendants are Timely**

10 359. Cal. Code Civ. Proc. § 338 codifies the delayed discovery rule in connection
11 with fraud actions, such that a cause of action for fraud "is not deemed to have
12 accrued until the discovery, by the aggrieved party, of the facts constituting the
13 fraud . . ."

14 360. Plaintiff discovered fraudulent omissions and violations against Defendants
15 after October 1, 2009 Thus, Plaintiff's claims are timely under the applicable three-
16 year statute of limitations.

17 **FIFTHTEENTH CAUSE OF ACTION**
18 **UNCONSCIONABILITY**
19 **CIVIL CODE SECTIONS 1670.5(a), 1770(s)**
20 **(AGAINST ALL DEFENDANTS)**

21 361. Plaintiff realleges and incorporates the preceding paragraphs of this
22 Complaint as if they were fully set forth herein.

23 362. Civil Code Sections 1670.5(a) and 1770(s) provide that if a court finds a
24 contract or any clause to be unconscionable, it may refuse to enforce the contract.

25 363. While "unconscionability" is not defined by statute, the basic test is whether,
26 in light of the general background and the needs of the particular case, the clauses
27 involved are so one-sided as to be unconscionable under the circumstances existing
28 at the time of the contract is made. The principle is one of prevention of oppression
and unfair surprise, and not of disturbance of the allocation of risks because of
superior bargaining power.

1 364. Due to Broker and Lender's obvious forgery of The Uniform Residential
2 Application falsifying Plaintiff's income. By failing to disclose, or accurately
3 disclose, material credit information, as described above, Creditors have engaged,
4 and continue to engage, in deceptive acts or practices. Due to Broker and Lender's
5 violation of California Code Section 1916.7 and TILA, Plaintiff was precluded
6 from shopping around for a more competitively priced loan, was deprived of an
7 opportunity to make an informed decision as to which loan product if any was
8 suitable for her, and was not able to reasonably decipher terms in her loan contract.
9 Broker and Lender's failure to disclose key terms of the Subject Loan combined
10 with Broker and Lender's superior bargaining power at the time the Subject Loan
11 agreements were made render the Subject Loan agreements unconscionable.

12 365. The adjustable rate mortgage agreement between Plaintiff and Broker and
13 Lender is unconscionable and should not be enforced by the Court because
14 Plaintiff is informed and believes that Broker and Lender have engaged in
15 predatory lending practices against Plaintiff amounting to unlawful, unfair and
16 fraudulent business practices as described in this Complaint.

17 366. As a result of Broker and Lender's conduct, Plaintiff is entitled to damages
18 and extended rescission rights.

19 **SIXTEENTH CAUSE OF ACTION**
20 **RESCISSION**
21 **CALIFORNIA CIVIL CODE SECTION 1689 (b)**
22 **(AGAINST ALL DEFENDANTS)**

23 367. Plaintiff realleges and incorporates the preceding paragraphs of this
24 Complaint as if they were fully set forth herein.

25 368. The California Civil Code Section 1689(b) provides in pertinent part a party is
26 authorized to rescind a contract induced by fraud, duress, menace or undue
27 influence.

28 369. Defendants AMN and WALMAR's numerous failures to disclose critical loan
terms amount to predatory lending practices against Plaintiff. Such practices, as
pleaded throughout this SAC, amount to unlawful, unfair and fraudulent business
practices. As pleaded throughout this Complaint, Defendants have induced
Plaintiff's consent to enter into the Subject Loan agreements by fraud.

1 370. As a result of Defendants' misconduct, Plaintiff has suffered damages to be
2 proven at trial.

3 371. Plaintiff seeks injunctive relief enjoining Defendants from engaging in unfair
4 business practices described herein.

5 372. Plaintiffs further seek restitution, disgorgement of sums wrongfully obtained,
6 costs of suit, reasonable attorney's fees, and such other and further relief as the
7 Court may deem just and proper including extended rescission rights.

8
9
10 **SEVENTEENTH CAUSE OF ACTION**
11 **NEGLIGENCE**
12 **(AGAINST FIRST AMERICAN)**

13 373. Plaintiff realleges and incorporates the preceding paragraphs of this
14 Complaint as if they were fully set forth herein.

15 374. On December 2, 2006, Plaintiff executed a note, a deed of trust and other
16 related documents to borrow \$556,000.00, secured by the subject property
17 (hereinafter the "Subject Loan"). The deed of trust identified FIRST AMERICAN
as the Title Insurer/Escrow Holder/Trustee.

18 375. FIRST AMERICAN, as title insurer, escrow holder, and trustee owed Plaintiff
19 a fiduciary duty to (1) faithfully follow escrow instructions; and (2) act with
20 reasonable care.

21 376. FIRST AMERICAN breached its duty by releasing funds from escrow
22 without all disclosures and documents required by law.

23 377. The missing documentation would have provided Plaintiff notice of her
24 inability to repay the loan and provided Plaintiff notice of the true terms of the
25 Subject Loan.

26 378. As a result of said FIRST AMERICAN's breach, Plaintiff's HELOC was
27 funded even though the loan documents expired on November 30, 2006. Plaintiff's
28 adjustable rate mortgage was also funded even though the loan documents expired

1 on November 20, 2006. These loans would not have been funded or closed had the
2 Plaintiff been aware of the true terms of the Subject Loan.

3 379. As a direct and proximate result of FIRST AMERICAN's breach, Plaintiff
4 has suffered damages in an amount in excess of this Court's jurisdictional
5 minimum, which amount will be proven at trial.

6
7
8 **EIGHTEENTH CAUSE OF ACTION**
9 **BREACH OF FIDUCIARY DUTY**
10 **(AGAINST FIRST AMERICAN)**

11 380. Plaintiff realleges and incorporates the preceding paragraphs of this
12 Complaint as if they were fully set forth herein.

13 381. On December 2, 2006, Plaintiff executed a note, a deed of trust and other
14 related documents to borrow \$556,000.00, secured by the subject property
15 (hereinafter the "Subject Loan"). The deed of trust identified FIRST AMERICAN
16 as the Title Insurer/Escrow Holder/Trustee.

17 382. FIRST AMERICAN, as title insurer, escrow holder, and trustee by and
18 through their agents, owed a fiduciary duty to Plaintiff to act primarily for their
19 benefit, to act with proper skill and diligence.

20 383. As Plaintiff's agents, FIRST AMERICAN owed a duty of loyalty and duty to
21 deal fairly with Plaintiff at all times.

22 384. FIRST AMERICAN breached its duty by releasing funds from escrow
23 without all disclosures and documents required by law.

24 385. The missing documentation would have provided Plaintiff's notice of their
25 inability to repay the loan and provided Plaintiff's notice of the true terms of the
26 Subject Loan.

27 386. As a result of said FIRST AMERICAN's breach, Plaintiff's HELOC was
28 funded even though the loan documents expired on November 30, 2006. Plaintiff's
adjustable rate mortgage was also funded even though the loan documents expired

1 on November 20, 2006. These loans would not have been funded or closed had the
2 Plaintiff been aware of the true terms of the Subject Loan.

3 387. As a direct and proximate result of FIRST AMERICAN's breach, Plaintiff
4 has suffered damages in an amount in excess of this Court's jurisdictional
5 minimum, which amount will be proven at trial.
6
7
8
9

10 **NINETEENTH CAUSE OF ACTION**
11 **VIOLATION OF CALIFORNIA CIVIL CODE SECTION 2923.5**
12 **(AGAINST ALL DEFENDANTS)**

13 388. Plaintiff realleges and incorporates the preceding paragraphs of this
14 Complaint as if they were fully set forth herein.

15 389. Pursuant to California Civil Code Section 2923.5, a mortgagee, trustee
16 beneficiary or authorized agent may not file a notice of default until 30 days after
17 contacting a borrower in person or by telephone to assess the borrower's financial
18 situation and explore options for the borrower to avoid foreclosure.

19 390. Nevertheless, Defendants failed to contact and assess Plaintiff's financial
20 situation and explore options for Plaintiff to avoid foreclosure on the subject
21 residence.

22 391. California Civil Code Section 2923.5 subsection (b) further requires said
23 defendants to include a declaration outlining their due diligence to contact Plaintiff
24 prior to serving a Notice of Default. On information and belief, Plaintiff thereon
25 alleges that the Notice of Default filed in connection with the Subject Loan did not
26 include the required declaration.

27 392. Plaintiff was injured by reason of these violations of Civil Code Section
28 2923.5, in that, as a direct and proximate result of Defendants' conduct, Plaintiff
has suffered, and continues to suffer, damages including, without limitation,
monetary damages and emotional distress, all in an amount in excess of this
Court's jurisdictional minimum, which amount will be proven at trial.

1 393. As a result of the above-alleged misconduct, Plaintiff has been required to
2 commence and prosecute this action, and may incur attorney's fees and costs in an
3 amount to be proven at trial. Pursuant to the controlling contractual document(s)
4 and/or applicable law, Plaintiff is entitled to recover their costs and reasonable
5 attorneys' fees.
6

7 **TWENTIETH CAUSE OF ACTION**
8 **VIOLATION OF CALIFORNIA CIVIL CODE 2923.6**
9 **(AGAINST ALL DEFENDANTS)**

10 394. Plaintiff realleges and incorporate by reference the above paragraphs as
11 though set forth fully herein.
12
13

14 395. Defendants' Pooling and Servicing Agreement (hereinafter "PSA") contains
15 a duty to maximize net present value to its investors and related parties.
16
17

18 396. California Civil Code 2923.6 broadens and extends this PSA duty by
19 requiring servicers to accept loan modifications with borrowers.
20
21

22 397. Pursuant to California Civil Code 2923.6(a), a servicer acts in the best
23 interest of all parties if it agrees to or implements a loan modification where the (1)
24 loan is in payment default, and (2) anticipated recovery under the loan
25 modification or workout plan exceeds the anticipated recovery through foreclosure
26 on a net present value basis.
27
28

1
2 398. California Civil Code 2923.6(b) now provides that the mortgagee,
3 beneficiary, or authorized agent offer the borrower a loan modification or workout
4 plan if such a modification or plan is consistent with its contractual or other
5 authority.
6

7
8
9 399. Plaintiff's loan is presently in an uncertain state.
10

11
12 400. Plaintiff is willing, able, and ready to execute a modification of her loan on
13 the following terms:
14

- 15 (a) New Loan Amount: 360,000.00
16 (b) New Interest Rate: 2%
17 (c) New Loan Length: 30 years
18 (d) New Payment: \$1330.63
19

20 401. The present fair market value of the property is \$360,000.00.
21

22
23 402. The Joint Economic Committee of Congress estimated in June, 2007, that
24 the average foreclosure results in \$77, 935.00 in costs to the homeowner, lender,
25 local government, and neighbors.
26
27
28

1 403. Of the \$77,935.00 in foreclosure costs, the Joint Economic Committee of
2 Congress estimates that the lender will suffer \$50,000.00 in costs in conducting a
3 non-judicial foreclosure on the property, maintaining, rehabilitating, insuring, and
4 reselling the property to a third party. Freddie Mac places this loss higher at
5 \$58,759.00.
6

7
8
9 404. The 320,000 through foreclosure on a net present value basis is \$40,000 more
10 than the defendants will recover through foreclosure.
11

12
13 405. The recovery under the proposed loan modification at \$360,000 in addition
14 to accrued interest exceeds the net present value recovery through foreclosure of
15 \$320,000 by over \$160,000.00.
16

17
18
19 406. Pursuant to California Civil Code §2823.6, Defendants are now
20 contractually bound to accept the loan modification as provided above.
21

22
23 **TWENTY-FIRST CAUSE OF ACTION**
24 **DECEPTIVE BUSINESS PRACTICES**
25 **(AGAINST ALL DEFENDANTS)**

26 407. Plaintiff realleges and incorporates the preceding paragraphs of this
27 Complaint as if they were fully set forth herein.
28

1 408. The entire foreclosure process has been conducted utilizing a string of
2 fraudulent documents. If the invalid assignment purporting to the alleged
3 beneficial interest is fraudulent, then there is no basis in which to foreclose. Void
4 Assignment of the Deed of Trust, and a void Substitution of Trustee, which wasn't
5 even valid at its onset, has resulted in an entirely void foreclosure on its face. The
6 signatories had no authority on which to act, did not have a recorded power of
7 attorney, and were employees with conflicting interests to legally execute
8 documents. The Corporate Assignment of Deed of Trust (Exhibit E) was executed
9 by Theodore Schultz as Vice-President of MERS. This assignment when recorded
10 purportedly assigns the security instruments to AURORA. It has been discovered
11 that Theodore Schultz is actually an employee of AURORA (Exhibit H) which is a
12 subsidiary of Lehman Brothers. Therefore, Exhibit E was not executed by MERS
13 but rather by an employee of AURORA. This is now a case whereby a bank has
14 bestowed upon itself the powers of a beneficiary without authority to do so. If this
15 act is judicially acceptable, what's to stop anyone from simply assigning the
16 security instruments to themselves by asserting to be the Vice-President of MERS,
17 and then commence foreclosure on a consumer's principle residence? Before a
18 Trustee can commence a foreclosure, they must be **empowered by the beneficiary**
19 **either by a Deed of Trust or a valid Substitution Of Trustee** recorded in the
20 County in which the trust property is situated. I have noted that the original
21 Trustee on the Deed of Trust was FIRST AMERICAN. A Substitution of Trustee
22 (Exhibit F) was executed on 10/01/2009 by Jennifer Victa as Assistant Secretary
23 for MERS. This document was acknowledged by the notary J. Archuleta 55 days
24 later who asserted that Jennifer Victa was who she alleged to be. It has been
25 discovered that Jennifer Victa is indeed an employee of CAL-WESTERN (Exhibit
26 G) who happens to be the Substituted Trustee named in the Substitution of Trustee
27 (Exhibit F). Therefore, CAL-WESTERN appointed oneself as Trustee and in doing
28 so, initiated foreclosure on a consumer's principle residence by executing and

1 recording a Notice of Default. This is also a case whereby an instrument was
2 executed and recorded which appoints an attorney-in-fact by the attorney-in-fact so
3 appointed. Given this discovery, all instruments originated, executed and recorded
4 by CAL-WESTERN should be voidable.

5
6 409. Cal. False Claims Act, Cal. Gov't. Code 12650 et. seq. : Cause for using
7 false and misleading claims through filing recordable documents *presumed to be*
8 *true by virtue of statutory compliance with filing requirements, yet carry no*
9 *validity due to parties' lack of standing to issue and by notarized documents*
10 *bearing false information.*

11
12 "Fraud destroys the validity of everything into which it enters," *Nudd v. Burrows*,
13 91 U.S. 426. "Fraud vitiates everything," *Boyce v. Grundy*, 3 Pet. 210. "Fraud
14 vitiates the most solemn contracts, documents and even judgments," *U.S. v.*
15 *Throckmorton*, 98 U.S. 61. Therefore (whatever action)should be dismissed
16 for fraud.

17
18 410. Plaintiff alleges that Defendants, and each of them, knew at the time they
19 made these representations to Plaintiff that they were untrue, and defendants knew
20 at the time that they were attempting to foreclose on Plaintiff's Trust Deed and
21 note that they had no right to do so.

22
23 411. Plaintiff alleges that Defendants cannot affirmatively prove that they have
24 complied with each of the statutory requirements for foreclosure.

25
26 412. Each of them, intentionally and fraudulently have attempted to convert
27 Plaintiff's right, title and interest to their property, and any equity therein.
28

1
2 413. Additionally, Plaintiff has been made to suffer deep and severe emotional
3 distress, mortification, anxiety and humiliation all to their damage and injury in an
4 amount the totality of which has not yet been fully ascertained, but in no event less
5 than the jurisdiction limitations of this court.

6
7 414. Defendants' conduct as set forth above was intentional, oppressive
8 fraudulent and malicious so as to justify an award of punitive damages in an
9 amount sufficient that such conduct will not be repeated.

10
11 415. Defendants do not have standing or enforceable right to enforce the note and
12 any incidental right to collateral so as to have foreclosed on Plaintiff's Home,
13 including without limitation, planning to conduct the invalid foreclosure sale on
14 the property.

15
16 416. Defendants threaten to, and unless restrained, will evict Plaintiff.

17
18
19 417. Any such action will cause irreparable harm to Plaintiff, and will cause
20 pecuniary compensation which will not afford adequate relief because Plaintiffs'
21 home is unique.

22
23 418. Injunctive relief is necessary to enjoin Defendants from consummating the
24 illegal foreclosure sale with a wrongful eviction since they lacked standing and any
25 enforceable rights under the Promissory Note and Deed of Trust.

TWENTY-SECOND CAUSE OF ACTION

Negligence

(AGAINST ALL DEFENDANTS)

419. Plaintiff realleges and incorporates the preceding paragraphs of this Complaint as if they were fully set forth herein.

420. All Defendants, inclusive, owe Plaintiffs a duty to conform of reasonable care and the avoidance of unreasonable risk of harm to Plaintiffs.

421. Defendants willfully and intentionally breached this duty of care by subjecting the Plaintiffs to an unreasonable risk of harm. Defendants, namely Broker and Lenders, knowing Plaintiffs did not have the financial means to ultimately make monthly payments in connection with the Subject Loan, nevertheless offered the loan to Plaintiffs. Defendants, namely Broker and Lenders, further breached this duty by failing to disclose to Plaintiffs, as required by federal law and state law, all adverse consequences of the Subject Loan, by securing an undisclosed profit for the sale and servicing of the Subject Loan in violation of TILA and RESPA, among other statutes, and by engaging in unfair business practices.

422. As a direct and proximate result of Defendants' breaches as alleged herein, Plaintiffs has been damaged and is entitled to actual damages.

1 423. Defendants' willful, oppressive, intentional and malicious breaches of
2 fiduciary duty authorize the imposition of exemplary damages pursuant to
3 California Civil Code Section 3294.

4
5 424. The Plaintiff incorporates herein by reference the allegations made in
6 paragraphs above that at all times the Defendants, acting as Plaintiff's lender and
7 loan servicers had a duty to exercise reasonable care and skill to maintain proper
8 and accurate loan records and perform procedures according to law and the
9 processes set forth in said laws. This would include transfer of deeds, notices,
truthful reporting and include, but not limited to, the proper loan numbers
associated with alleged promissory notes.

10 425. In taking the actions alleged above, and in failing to take the actions as
11 alleged above, the Defendants breached their fiduciary duty of due care and skill to
12 the Plaintiff in the servicing of the Plaintiff's loan by, among other things, failing to
13 properly and accurately recording loan numbers, preparing and filing false
14 documents, and foreclosing on the Subject Property, without having the legal
authority and/or proper documentation to do so.

15 426. As a direct and proximate result of the negligence and carelessness of the
16 Defendants as forth above, the Plaintiff suffered general and special damages and
17 irreparable harm in an amount to be determined at trial.

18 **TWENTY-THIRD CAUSE OF ACTION**
19 **SLANDER OF TITLE**
20 **(AGAINST ALL DEFENDANTS)**

21 427. Plaintiff realleges and incorporates the preceding paragraphs of this
22 Complaint as if they were fully set forth herein.

23
24 428. Plaintiff contends that her property has been slandered with invalid and
25 fraudulent foreclosure documents recorded in the Los Angeles County Recorder's
26 Office.
27
28

1 429. The recordation of an instrument facially valid but without underlying merit
2 will, of course, give rise to an action for slander of title (*Forte v. Nolfi* (1972) 25
3 Cal.App.3d.656, 685-686 [102 Cal.Rptr. 455]).

4
5 430. Given weight to the invalidity of the foreclosure proceeding, trespass on the
6 deed of trust and inability to prove holder in due course status, Defendants acted
7 without privilege to disparage Plaintiff's title and said actions constitute a Slander
8 of Title by Disparagement under Cal. Civil Code 40.81.

9
10 431. Defendants are intimidating Plaintiff with wrongful foreclosure threats. A
11 definition of the tort for slander, perhaps more pertinent to the facts of this case, is
12 to be found in *Fearon v. Fodera* (1915) 169 Cal. 370, at pages 379 and 380 [148 P.
13 200], as follows: "Slander of title," as recognized by the law, may be defined to be
14 defamation of title to property, real or personal, by one who falsely and
15 maliciously disparages the title thereof, and thereby causes the owner thereof some
16 special pecuniary loss or damage. "Admittedly under this definition slander of title
17 may be committed by maliciously clouding the title to real property and causing
18 damage to the owner thereof by the execution, willful acceptance, and malicious
19 recordation of a deed, which falsely declares the title of the property involved to be
20 in a person other than the true owner."

21
22
23 432. Plaintiff is aware that title has not been fraudulently conveyed to Defendant
24 AURORA yet, but the Trustee's Sale scheduled tentatively August 24, 2011, is an
25 attempted theft of property should the sale take place.

26
27 433. California has adopted the definition of the tort of slander of title set forth in
28 section 624 of the Restatement of Torts, which provides: "One who, without a

1 privilege to do so, publishes matter which is untrue and disparaging to another's
2 property in land under such circumstances as would lead a reasonable man to
3 foresee that the conduct of a third person as purchaser or lessee thereof might be
4 determined thereby is liable for pecuniary loss resulting to the other from the
5 impairment of vendibility thus caused." (*Howard v. Schaniel* (1980) 113 Cal.App.
6 3d 256, 263-264 [169 Cal.Rptr. 678]; see *Gudger v. Manton* (1943) 21 Cal.2d 537,
7 541 [134 P.2d 2170].

8
9 434. Under 392 of the Code of Civil Procedure, said, in *Coley v. Hecker*, 206 Cal.
10 22, 272 P. 1045, 1047, ...'the owner of the slandered title is given the right to bring
11 and maintain the action in the county where the real property is situated, upon the
12 theory that the action is one in which the determination of the owner's right or
13 interest therein is properly adjudicated, and for the additional reason that slander of
14 title is an injury to real property.

15
16 435. The Court then went on to say 'The phrase 'slander of title' is a figure of
17 speech in which the title is personified. In the instant case, the phrase seems to be
18 an anomaly as applied to a situation which, strictly speaking, is a libel upon the
19 title, inasmuch as the damage was accomplished by the recordation of a written
20 document, and no spoken words were uttered. However, the term 'slander of title'
21 includes both spoken and written means by which the right of property may be
22 invaded and a right of action exists, irrespective of the means by which the title is
23 traduced. This is so because a property right has been invaded-- an injury to real
24 property has been sustained.

25
26
27 436. This language of the highest court of the state is entitled to great weight, and
28 this view of 'slander of title' as an injury to property is repeated in *Smith v.*

1 *Stuteman*, 79 Cal.App.2d 708, 181 P.2d 123, 124. In the Smith case the question
2 was whether an action for slander of title survived the death of the defendant, 574,
3 Probate Code. The question there was whether a **trespass on real property** which
4 survives the death of a defendant includes an action for slander of title. In holding
5 that it did, the Court pointed out that trespass has a broadened meaning today and
6 now includes consequential injuries to realty such as an action for slander of title,
7 as well as direct physical injuries.

8
9 437. We quote from *Smith v. Stuteman*, 79 Cal.App.2d 708, 181 P.2d 123, 124:
10 'Slander of title is a tort action for redress of an invasion of a **particular property**
11 **right**, that of immediate salability of the property involved. *Coley v. Hecker*, 206
12 Cal. 22, 27, 272 P. 1045; Restatement, Torts, sec. 624. As a cause of action arising
13 out of a violation of a property right it survives the death of its owner. Civil Code,
14 sec. 954; *Wikstrom v. Yolo Fliers Club*, 206 Cal. 461, 464, 274 P. 959. It has been
15 held that it necessarily follows that such a cause of action also survives the death of
16 the defendant. *Vraghizan v. Savings Union, etc., Co.*, 31 Cal.App. 709, 713, 161 P.
17 507.

18
19
20 **TWENTY-FOURTH CAUSE OF ACTION**
21 **TRESPASS ON THE CONTRACT**
22 **(AGAINST ALL DEFENDANTS)**

23 438. Plaintiff realleges and incorporates the preceding paragraphs of this
24 Complaint as if they were fully set forth herein.

25
26 439. The Deed of Trust is the contract which allows a non-judicial foreclosure to
27 proceed and gives Power of Sale to the duly appointed Trustee. Per the Deed of
28 Trust, only the Lender can invoke the foreclosure (paragraph #22).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

440. Per Deed of Trust paragraph #24, the Lender may appoint a Trustee. (Exhibit F) Under "Substitute Trustee", the language clearly states that the Lender, may appoint successor trustees **via an instrument** acknowledged by the Lender and recorded in the County in which the property is located. This paragraph also states **"This procedure for substitution shall govern to the exclusion of all other provisions for substitution"** This implies that **only the Lender** can substitute a trustee. The Lender as defined on page 1 of the Deed of Trust is AMN. **This paragraph does not state that successors, assigns, or nominees may appoint a Successor Trustee.** Therefore, The Substitution of Trustee is invalid as it was executed by Jennifer Victa, an officer of MERS, who also happens to be an employee of CAL-WESTERN. The Substitution of Trustee is void, due to fraud, and was not executed in compliance with California Civil Code 2934(a). The Substitution of Trustee is invalid also because it was not executed by the Lender, per requirement of the Deed of Trust.

441. The duly appointed Trustee under the Deed of Trust as of the recording of the Notice of Default on September 24, 2009 was First Title Insurance Company. Cal-Western under false pretenses, was not substituted in as Trustee effectively until November 9, 2009.

442. The Notice of Default was recorded PRIOR to the Substitution of Trustee, which if it were the true holder-in-due-course, it would be mandatory to obtain beneficial interest in the Deed of Trust, prior to invoking foreclosure.

443. In the Case of a Mortgage with a power of sale, an assignee can only enforce the power of sale if the assignment is recorded, since the assignee's authority to

1 conduct the sale must appear in the public records, *New York Life Insurance Co. V.*
2 *Doane* (1936) 13 CA 2d. 233, 235-237, 56 P2d. 984, 56 ALR 22.

3
4 444. The fraudulent Substitution of Trustee was recorded AFTER the Notice of
5 Default, which proves the Notice of Default was void at its inception and recording
6 on November 9, 2009.

7
8 445. A non-judicial foreclosure sale under the power-of-sale in a deed of trust or
9 mortgage, on the other hand, must be conducted in strict compliance with its
10 provisions and applicable statutory law.

11
12 446. A Trustee's powers and rights are limited to those set forth in the deed of
13 trust and laws applicable thereto. (See, e.g., *Fleisher v. Continental Auxiliary Co.*,
14 (1963) 215 Cal.App.2d 136, 139, 30 Cal.Rptr. 137; *Woodworth v. Redwood*
15 *Empire Sav. & Loan Assn.*, (1971) 22 Cal.App.3d 347, 366, 99 Cal.Rptr. 373.)

16
17 447. The Trustee is charged with the duty to perform and condition precedent
18 prior to bringing the instant action and failed to do so. Paragraph (20) of the Deed
19 of Trust provides in pertinent part:

20 Neither borrower or lender may commence, join, or be joined to any judicial action
21 (as either an individual litigant, or the member of a class, that arises from the other
22 party's actions pursuant to this security instrument or alleges that the other party
23 has breached any provision of, or any duty by reason of, this Security Instrument,
24 until such borrower or lender has notified the other party (with such notice given
25 in compliance with the requirements of section 15) of such alleged breach and
26 afforded the other party hereto a reasonable period after giving of such notice to
27 take corrective action. If applicable law provides a time period which must elapse
28 before certain action can be taken, that time period will be deemed to be reasonable

1 for the purposes of this paragraph. The notice of acceleration and notice to cure
2 given to borrower pursuant to Section 22 and the notice of acceleration given to
3 borrower pursuant to Section 18 shall be deemed to satisfy the notice and
4 opportunity to take corrective action provisions of this Section 20. (Emphasis
5 added.)

6
7 448. When there is an agreement between the Beneficiary and Trustor, such as
8 the Condition Precedent expressed in Paragraph 20 of the Deed of Trust, a
9 Foreclosure cannot take place before the condition is satisfied.

10
11 449. If the Beneficiary fails to carry out its obligation a subsequent foreclosure is
12 invalid. Haywood Lumber & Investment Co. V. Corbett (1934) 138 CA 644, 650,
13 33 P2d 41.

14
15 450. MERS, AURORA and CAL-WESTERN as agent have not complied with any
16 expressed provisions of the Deed of Trust, have speciously trespassed upon the
17 Deed of Trust and Plaintiff's property, and the foreclosure must be rendered void
18 and rescinded and the trustee's sale cancelled immediately.

19
20 451. *California Civil Code 3513.* Any one may waive the advantage of a law
21 intended solely for his benefit. But a law established for a public reason cannot be
22 contravened by a private agreement.

23
24 452. *California Civil Code 3514.* One must so use his own rights as not to infringe
25 upon the rights of another.

26
27 453. Trustors are systematically deprived of their rights to due process with no way
28 to substantially enforce the law with regards to §2924 of the Civil Code which, as

1 enforced in California, is akin to a freight train at full speed; the fuel for which is
2 found in subsection (c) of that code that states: " A recital in the deed executed
3 pursuant to the power of sale of compliance with all requirements of law regarding
4 the mailing of copies of notices or the publication of a copy of the notice of sale or
5 the personal delivery of the copy of the notice of default or the posting of copies of
6 the notice of sale or the publication of a copy thereof shall constitute prima facie
7 evidence of compliance with these requirements and conclusive evidence thereof
8 in favor of bona fide purchasers and encumbrancers for value and without notice."

9
10 454. Alone this provision irrationally denies equal rights to sue and gives
11 evidence to mortgagees, whose properties were the victims of fraudulent
12 foreclosures (foreclosures instituted or prosecuted by any party, principal, witness,
13 or attorney willing, either knowingly or negligently, to present false recitations
14 regarding compliance with statutory provisions regarding service and delivery of
15 notices).

16
17 455. MERS, AURORA and CAL-WESTERN have violated Title 42 USC 1983,
18 by depriving Plaintiff of the following clearly established and well-settled
19 constitutional rights protected by the Fourth and Fourteenth Amendments to the
20 U.S. Constitution and the invoked due process rights of Article(s) IV, and VI in
21 Amendment to the Federal Constitution, contrary to Article I §10 (clause 1) of the
22 Federal Constitution to wit:

23 The right not to have her contracts impaired, Article I, §10, clause 1;

24 The right of one not to be deprived of constitutionally protected interests in
25 one's property; California Constitution § 1 Art. 1.

26
27
28 456. "Where administrative action may result in loss of both property and

1 life, or of all that makes life worth living, any doubt as to the extent of power
2 delegated to administrative officials is to be resolved in citizen's favor, and court
3 must be especially sensitive to the citizen's rights where proceeding is non-
4 judicial." United States v. Minker, 350 U.S.179(1956).

5 457. The Defendants have trespassed on Plaintiff's property and the deed of trust
6 in concert as a scheme to defraud Plaintiff out of her property. Plaintiff desires
7 rescission of the invalid foreclosure.

8
9 **TWENTY-FIFTH CAUSE OF ACTION**

10 **Wrongful Conversion of Real Property**

11 **(AGAINST ALL DEFENDANTS)**

12
13 458. Plaintiff realleges and incorporates the preceding paragraphs of this
14 Complaint as if they were fully set forth herein.

15
16 459. Defendants MERS, AURORA and CAL-WESTERN's invalid foreclosure
17 proceeding is a result of wrongful conversion of Plaintiff's property.

18
19 460. The Defendants wrongfully converted the trespass on Plaintiff's contract to
20 an alleged interest in her property.

21
22 461. Converting Real Property by Defendants or any other entity from its true
23 owner without true owner's knowledge and consent is an act of "conversion
24 through fraudulent means" and "Direct conversion."
25

26
27 462. Defendant cannot obtain legal and equitable title to property by fraud. The
28 trustee's sale purportedly scheduled for August 24, 2011 is a fraud upon the public,

1 wrongful conversion of real property and attempted theft of real property. The
2 sale, if held, would be illegally held subsequent to an invalid Notice of Default.

3
4 463. *Lo v. Jensen* (2001) 88 Cal.App 4th 1093, 1095, A trustee's sale tainted by
5 fraud may be set aside.

6
7 464. *Angell v. Superior Court* (73 Cal.App. 4th 691).

8
9 **TWENTY-SIXTH CAUSE OF ACTION**

10 **Wrongful Foreclosure**

11 **CALIFORNIA CIVIL CODE SECTION 2924, CALIFORNIA**
12 **COMMERCIAL CODE SECTIONS 3-301, 3-305, 33-801, 33-807, 2932.5**
13 **(AGAINST ALL DEFENDANTS)**

14 465. Plaintiff realleges and incorporates the preceding paragraphs of this
15 Complaint as if they were fully set forth herein.

16 466. California Commercial Code Section 3301 specifically identifies the persons
17 who are entitled to enforce a security interest, such as instituting a foreclosure sale
18 under a deed of trust. The statute is exclusive, rather than inclusive in nature, and
19 those who are not identified do not have the right to enforce such an interest. The
20 statute sets forth that only the holder of the instrument, or a non-holder in
21 possession of the instrument with rights of the holder, or person not possessing the
22 instrument but entitled to enforce the instrument pursuant to California
23 Commercial Code § 3309 may enforce the instrument.

24 467. While possession of an instrument such as a promissory note is not by itself a
25 requirement for non-judicial foreclosure, California Commercial Code § 3309
26 provides that a person without a promissory note may foreclose **only in limited**
27 **circumstances**. California Commercial Code § 3309 states that a person not in
28 possession of an instrument may **only** enforce the instrument if:

a. The person was in possession of the instrument and entitled to enforce it when
loss of possession occurred;

1 b. The loss of possession was not the result of a transfer by the person or a lawful
2 seizure; and

3 c. The person cannot reasonably obtain possession of the instrument because the
4 instrument was destroyed, its whereabouts cannot be determined, or it is in the
5 wrongful possession of an unknown person or a person that cannot be found or is
6 not amenable to service of process.

7 468. The Notice of Trustee's Sale pertaining to the subject property fails to identify
8 who is the holder of the beneficial interest. Plaintiff is informed and believes, and
9 thereon alleges, that Defendants are not in possession of the note ("Instrument") in
10 connection with the subject property.

11 489. Plaintiff is informed and believes, and thereon alleges that a) Defendants did
12 not lose possession of the Instrument via the means set forth in Commercial Code
13 § 3309, and b) therefore cannot enforce the security interest in the subject property
14 pursuant to Commercial Code §§ 3301 and 3309.

15 490. Furthermore, neither AURORA, MERS, nor CAL-WESTERN possess valid
16 security interests in the property sought to be foreclosed, for the following reasons:

- 17 a. Defendants failed to properly record and give notice of the Notice of
18 Default, a pre-condition to a foreclosure sale, required by California Civil
19 Code Section 2923.5(b).
20 b. As Broker and Lender obtained their interest in the subject property illegally
21 and fraudulently, as set forth herein this Complaint, they had no right to
22 convey such interest to any other trustees, nominees, or beneficiaries.
23 Defendants AURORA, MERS, and CAL-WESTERN therefore hold no
24 beneficial interest in the subject property and may not foreclose.

25 491. Defendants seek to proceed with an unlawful trustee's sale without lawful
26 security interest in the subject property. Defendants did not possess the right to
27 enforce the security interest at any time, regardless of whether Defendants
28 possessed the Instrument.

492. Plaintiff therefore is informed and believes, and thereon alleges that said
Defendants are not "person[s] entitled to enforce" the security interest on the
subject property, as that term is defined in Commercial Code Section 3301.

1 493. Defendants do not have any legal right to foreclose upon the subject property.
2 Furthermore, the procedures implemented by said defendants in attempting to
3 enforce the alleged security interest in the subject property violated statutory
requirements governing non-judicial foreclosure proceedings.

4 494. As a direct and proximate result of said Defendants' misconduct. Plaintiff has
5 suffered damages, including without limitation, direct monetary loss, consequential
6 damages and emotional distress.

7 495. In committing the wrongful acts alleged herein, Defendants acted with malice,
8 oppression and fraud. Defendants' willful conduct warrants and award of
9 exemplary damages in an amount sufficient to punish the wrongful conduct alleged
herein and deter such misconduct in the future.

10 **TWENTY-SEVENTH CAUSE OF ACTION:**
11 **Violation Of § 1788.17 Of The RFDCPA**
12 **(AGAINST ALL DEFENDANTS)**

13 496. Plaintiff realleges and incorporates by reference the above paragraphs as
14 though set forth fully herein.
15

16
17 497. *California Civil Code §1788.17* requires that Defendants comply with the
18 provisions of *15 U.S.C. § 1692*, through their acts including but not limited to, the
19 following:
20

- 21
22 (a) The Defendants violated *California Civil Code § 1788.17* by engaging
23 in conduct, the natural consequence of which is to harass, oppress, and
24 abuse persons in connection with the collection of the alleged debt, a
25 violations of *15 U.S.C. § 1692(d)*;
26
27
28

1 (b) The Defendants violated *California Civil Code § 1788.17* by
2 misrepresenting the status of the debt, a violations of *15 U.S.C. §*
3 *1692(e)(s)(A)*;

4
5 (c) The Defendants violated *California Civil Code § 1788.17* by using
6 unfair or unconscionable means to collect or attempt to collect a debt,
7 a violation *15 U.S.C. § 1692(f)*; and

8
9 (d) The Defendants violated *California Civil Code § 1788.17* by using
10 deceptive means to collect or attempt to collect a debt from the
11 Plaintiffs, a violation of *15 U.S.C. § 1692e(10)*.

12
13 498. The foregoing violations of *15 U.S.C. § 1692* by Defendants result in separate
14 violations of *California Civil Code § 1788.17*.

15
16
17 499. The forgoing acts by Defendants were willful and knowing violations of *Title*
18 *1.6C of the California Civil Code (FRDCPA)*, are sole and separate violations
19 under *California Civil Code § 1788.30(b)*, and trigger **multiple \$1,000.00**
20 **penalties.**

21
22
23
24 500. *California Civil Code § 1788.17* provides that Defendants are subject to the
25 remedies of *15 U.S.C. § 1692(k)*, for failing to comply with the provisions of *15*
26 *U.S.C. § 1692(b)(6) and § 1692(c)c.*

1 501. The foregoing acts by Defendants were intentional persistent, frequent, and
2 devious violations of *15 U.S.C. § 1692*, which trigger additional damages of
3 **\$1,000.00 under *15 U.S.C. § 1692(k)(a)(2)(A)*.**
4

5
6 **TWENTY-EIGHTH CAUSE OF ACTION**
7 **Intentional Infliction of Emotional Distress**
8 **(AGAINST ALL DEFENDANTS)**

9 502 Plaintiff realleges and incorporates the preceding paragraphs of this Complaint
10 as if they were fully set forth herein.

11 503. Defendants' attempt to foreclose on Plaintiff's property knowing that the
12 adjustable rate mortgage agreement between Plaintiff and the Defendants was
13 illegal and void because the loan was predatory was intended to be and was a
14 reckless act resulting in Plaintiff sustaining extreme emotional distress.

15 504. Defendants' recklessly failed to evaluate Plaintiff's ability to repay the
16 Subject Loan with an intention to profit from Plaintiff's default. Such conduct is
17 extreme and outrageous.

18 505. Recovery of damages for mental suffering is permitted in regard to contracts,
19 like the Subject Loan agreement, which so affect the vital concerns of the
20 individual that severe mental distress is a foreseeable result of breach. The Subject
21 Loan agreement relates to Plaintiff's residence. The residence of the Plaintiff is
22 clearly a matter which directly concerns the comfort, happiness, or personal
23 welfare of the Plaintiff. Loss of one's home is bound to directly affect a person's
24 affection, self-esteem, or tender feelings. Consequently, damages for intentional
25 infliction of emotional distress are recoverable for Defendants' actions in relation
26 to the Subject Loan and the foreclosure of the subject property.

27 506. Recovery of damages for mental suffering is also permitted with regard to
28 fraud claims sounding in tort, such as fraudulent misrepresentation, as pleaded
herein this Complaint.

507. As a result of Defendants' acts, Plaintiff has suffered damages in an amount
to be proven at trial.

1 508. Defendants' conduct was willful, oppressive and fraudulent and an award of
2 punitive damages is justified in an amount to be determined at trial.

3
4
5 **TWENTY-NINTH CAUSE OF ACTION**
6 **Unjust Enrichment**
7 **(AGAINST ALL DEFENDANTS)**

8 509. Plaintiff realleges and incorporates the preceding paragraphs of this
9 Complaint as if they were fully set forth herein.

10 510. By their wrongful acts and omissions, the Defendants have been unjustly
11 enriched at the expense of the Plaintiff, and thus the Plaintiff has been unjustly
12 deprived.

13 511. The DOT states in Paragraph 23: "Upon payment of all sums secured by this
14 Security Instrument, Lender shall request Trustee to reconvey the Property and
15 shall surrender this Security Instrument and all notes evidencing debt secured by
16 this Security Instrument to Trustee." The obligations to AMN under the DOT were
17 fulfilled when AMN received the balance on the Note as proceeds of sale through
18 securitization to private investors. AURORA has been unjustly enriched by
19 collecting monthly payments from Plaintiff.

20
21 512. Plaintiff seeks restitution for any payments he made to AURORA that were
22 not paid to the lender or beneficiary, if any.

23
24 513. By reason of the foregoing, the Plaintiff seeks restitution from the Defendants,
25 and an order of this Court disgorging all profits, benefits, and other compensation
26 obtained by the Defendants from their wrongful conduct.
27
28

1 **THIRTIETH CAUSE OF ACTION**
2 **Injunctive Relief**
3 **(AGAINST ALL DEFENDANTS)**

4 514. Plaintiff realleges and incorporates the preceding paragraphs of this
5 Complaint as if they were fully set forth herein.

6 515. The Plaintiff seeks injunctive relief to preserve the status quo as the balance
7 of equities so heavily favors the Plaintiff that justice requires the court to intervene
8 to secure the positions until the merits of the actions are ultimately determined.
9 *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

10 516. The Plaintiff has (1) a combination of probable success and the certainty of
11 irreparable harm, and/or (2) serious questions are raised and the balance of
12 hardship tips in her favor. *Arcamuzi v. Continental Air Lines, Inc.*, 819 F. 2d 935,
13 937 (9th Cir. 1987). The Plaintiff has demonstrated a significant threat of
14 irreparable injury and shows a chance of success on the merits. At a bare
15 minimum, the Plaintiff has demonstrated a fair chance of success on the merits,
16 and/or questions serious enough to require litigation. *Arcamuzi*, 819 F.2d at 937.

17 517. Injunctive relief to halt post-foreclosure proceedings serves a legitimate
18 purpose. Furthermore, equitable remedies are available in view of an irreparable
19 injury, as a real or immediate threat that the Plaintiff will be wronged again – a
20 likelihood of substantial and immediate irreparable injury. *City of Los Angeles v.*
21 *Lyons*, 461 U.S. 95, 111, 103 S.Ct. 1660, 1670 (1983) (quoting *O'Shea*, 414 U.S.
22 at 502, 94 S.Ct. at 679).

23 518. The Plaintiff provides credible, substantiated evidence of identifiable,
24 potentially repeatable wrongs and supports his injunctive relief request with
25 adequate legal and factual grounds.

26 **THIRTY-FIRST CAUSE OF ACTION**
27 **QUIET TITLE**
28 **(AGAINST ALL DEFENDANTS)**

519. Plaintiff realleges and incorporates the preceding paragraphs of this
Complaint as if they were fully set forth herein.

520. The Plaintiff is the equitable owner of the Subject Property which has the
following legal description:

1 Lot 23 of Tract 11193 in the City of Los Angeles, County of Los Angeles, as per
2 map recorded in book 202, pages 18 and 19 of maps, records in the office of the
3 County Recorder of said Los Angeles 208. Plaintiff is entitled to possession,
4 control, and ownership of the real property located at this address, together with
5 any improvements made thereon.

6
7 521. Defendants, AURORA, MERS, and CAL-WESTERN have at relevant times
8 claimed interests adverse to Plaintiff's interest in the subject property, in the form
9 of the deed of trust recorded pursuant to the Subject Loan. The relevant deeds of
10 trust are attached hereto as Exhibit B.

11
12 522. On December 2, 2006 Plaintiff executed a note, a deed of trust and other
13 related documents to borrow \$556,000.00, secured by the subject property
14 (hereinafter the "Subject Loan"). The terms of the loan were memorialized in a
15 promissory note which was in turn secured by a deed of trust on the subject
16 property. The deed of trust identified AMN as the lender. The deed of trust
17 identified WALMAR as the mortgage broker. The deed of trust further identified
18 MERS as the nominal beneficiary.

19
20 523. These representatives, agents and/or employees of Defendants, and each of
21 them, made false representations to Plaintiff in order to fund a loan, in which the
22 Plaintiff's personal residence was to be security therefore. Plaintiff alleges that
23 Defendants, and each of them, made certain representations regarding their
24 honesty, that they were experts in obtaining loans which borrower's could afford
25 and that they would only offer Plaintiff a loan which was in her best interest given
26 her credit history and financial needs and limitations and that Plaintiff could trust
27
28

1 the representations of Defendants, and each of them. Plaintiff alleges that based
2 upon the representations made by Defendants, and each of them, Plaintiff
3 reasonably reposed their trust in Defendants' representations and disclosed her
4 private financial information to Defendants, in order that Defendants could in
5 keeping with their representations, find a loan which was in the best interests of
6 Plaintiff given her financial needs and limitations. More particularly, Defendants,
7 and each of them, represented that they would not make a loan to Plaintiff unless
8 she could afford the loan, and that they would not make the loan unless and until
9 she had passed the underwriting guidelines of the lender, which further assured that
10 the loan being offered to Plaintiff was in fact in the Plaintiff's best interest, and
11 that the loan was within Plaintiff's financial needs and limitations.
12
13
14
15
16
17

18 524. The loan which contained excessive financing was approved to allow closing
19 costs to be financed. That Defendants failed to utilize adequate due diligence
20 regarding Plaintiff's ability to repay the loan, Defendants' as part of their
21 continuing scheme intentionally placed Plaintiff in a sub-prime loan to the benefit
22 of the Defendants with excessively high interest rates, Defendants failed to provide
23 Plaintiff mandated disclosures and Defendants repeatedly employed coercive
24 tactics in order to force Plaintiff to sign the loan documents.
25
26
27
28

1 525. Plaintiff alleges that due to the fraud of Defendants the title to the subject
2 property has been rendered unmarketable in that Defendants and their assigns,
3 have caused to be recorded as against the subject property documents which have
4 clouded Plaintiff's title thereto.
5

6
7
8 526. Plaintiff seeks an Order of the court quieting title to the subject property ,
9 effective as of the date on which the Subject Loan was commenced.
10

11 527. Defendant obtained the initial deed of trust by unlawfully entering into a
12 promissory note with Plaintiff. Defendants fraudulently induced Plaintiff to enter
13 into a loan with lenders. Defendants obtained their interest in the subject property
14 illegally and fraudulently and therefore had no right to convey such interest to any
15 other trustees, nominees, or beneficiaries.
16
17
18

19 528. Defendants obtained interests in the property located at 4011 Hubert Avenue,
20 Los Angeles, California 90008 as trustees, nominees or beneficiaries of lenders. As
21 lenders had no right to convey such interest to any other trustees, nominees, or
22 beneficiaries, Defendants could not have lawfully obtained beneficial interests in
23 the subject property. For the reasons set forth herein, Defendants hold no beneficial
24 interest in the subject property.
25

26 529. Plaintiff is therefore seeking to quiet title against the claims of said
27 Defendants under the said deeds of trust, effective as of the date on which the
28 Subject Loan was commenced.

1
2 530. Plaintiff's desire and is entitled to a judicial declaration quieting title in
3 Plaintiff's name as of the date on which the Subject Loan was consummated.
4

5 531. Defendants securitized Plaintiff's single-family residential mortgage loan
6 through RFC. Plaintiff is informed and believes that the lawful beneficiary has
7 been paid in full. The DOT states in paragraph 23:

8 Reconveyance. Upon payment of all sums secured by this Security
9 Instrument, lender shall request Trustee to reconvey the Property and shall
10 surrender this Security Instrument and all notes evidencing debt secured by this
11 Security Instrument to Trustee. Trustee shall reconvey the Property without
12 warranty to the person or persons legally entitled to it...

13
14 532. The DOT does not state that Plaintiff must pay all sums, only that all secured
15 sums must be paid. Plaintiff alleges that the obligations owed to AMN under the
16 DOT were fulfilled and the loan was fully paid when AMN received funds in
17 excess of the balance on the Note as proceeds of sale through securitization(s) of
18 the loan and insurance proceeds from Credit Default Swaps.
19

20 533. Defendants' claims are adverse to Plaintiff because Plaintiff is informed and
21 believes that none of the Defendants is a holder of the Note, none of them can
22 prove any interest in the Note, and none of them can prove that the Note is secured
23 by the DOT, as well as for the reasons set forth in the preceding causes of action.
24 As such, Defendants have no right, title, lien, or interest in the "Property".
25

26 534. Plaintiff therefore seeks a judicial declaration that the title to the
27
28

1 "Property" is vested solely in Plaintiff and that Defendants have no right, title,
2 estate, lien, or interest in the Property and that Defendants and each of them be
3 forever enjoined from asserting any right, title, lien or interest in the Property
4 adverse to Plaintiff.

5 535. The Plaintiff seeks to quiet title against the claims of the Defendants; ALL
6 PERSONS UNKNOWN, CLAIMING ANY LEGAL OR EQUITABLE RIGHT,
7 TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN
8 THE COMPLAINT ADVERSE TO PLAINTIFF'S TITLE, OR ANY CLOUD ON
9 Plaintiff's TITLE THERETO; and DOES 1 through 20 (collectively referred to
10 herein as the "Title Defendants"). In fact, the Title Defendants had no right to title
11 or interest in the Subject Property and no right to entertain any rights of ownership
12 including the right to foreclosure, offering the Subject Property for sale at a
13 Trustee's sale, demanding possession or filing cases for unlawful detainer.

14 536. The Plaintiff seeks to quiet title on the Subject Property. Plaintiff seeks a
15 judicial declaration that the title to the Subject Property is vested in the Plaintiff
16 alone and that the Title Defendants and each of them be declared to have no
17 interest estate, right, title or interest in the Subject Property and that the Title
18 Defendants, their agents and assigns, be forever enjoined from asserting any estate,
19 right title or interest in the Subject Property subject to the Plaintiff's rights.

20 CONCLUSION

21 In the interest of justice and prudence, this Court should study the effects of the
22 criminal conspiracy to defraud America known as MERS and ill-fated criminal
23 acts of "pretender lenders" which are servicers like AURORA purporting to be a
24 holder in due course, and their partners in crime – the trustee, CAL-WESTERN,
25 who at their beckon call is on standby to conduct each and every fraudulent
26 foreclosure at its disposal. In order to prevent the destruction of this country by the
27 criminal conspiracy, an Injunctive Relief in favor of Plaintiff to prevent the loss of
28 her home and irreparable harm from Defendants is necessary, and is also in the
interest of the public.

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby request a trial by jury of no less than twelve (12) persons on all
4 issues so triable pursuant to California Civil Procedure 192 and 220.

5
6 **PRAYER FOR RELIEF**

7
8 **WHEREFORE**, Plaintiff prays for judgment against the Defendants as
9 follows:

10 1. For award of damages against Defendants and each of them on
11 Plaintiff's claims as applicable as alleged above in an amount to be shown at trial if
12 Defendants steal Plaintiff's home as a result of this illegal foreclosure;

13 2. For a loan modification at market value, with terms acceptable to
14 Plaintiff, should Defendants be prohibited from conducting the illegal foreclosure
15 sale;

16 3. For an order of rescission on behalf of named Plaintiff;

17 4. For a temporary restraining order and preliminary and permanent
18 injunction on behalf of Plaintiff against AURORA, DEUTSCHE and CAL-
19 WESTERN, in addition to each and every one of their respective officers, agents,
20 employees, servants, and attorneys, and those persons in active concert or
21 participation with any of them or each of them, as specifically alleged above from
22 transferring any interest in the subject property, from proceeding with any eviction
23 action as to the Plaintiff and their residence and/or proceeding with any collection
24 action against the Plaintiff;

25 5. For a declaratory judgment holding that Plaintiff's rights were
26 violated as alleged above;
27
28

1 6. For a judgment for the Plaintiff for all money damages available in a
2 sum to be determined if Defendants steal her home, in an amount to be shown at
3 trial;

4 7. For an award of attorney fees to the Plaintiff for her reasonable
5 attorney's fees, court costs and necessary disbursements incurred in connection
6 with this lawsuit; and,

7 Plaintiff demands a jury trial.

8 WHEREFORE, Plaintiffs pray for judgment and an order against Defendants,
9 inclusive, as follows:

- 10 1. That judgment be entered in Plaintiff's favor and against Defendants, and each
11 of them;
- 12 2. For an order requiring Defendants to show cause, if any, why they should not be
13 enjoined as set forth below, during the pendency of the action;
- 14 3. For a temporary restraining order, preliminary and permanent injunction
15 preventing Defendants or anyone acting in concert with them, from collecting on
16 the Subject Loan and from causing the subject property to be sold, assigned or
17 transferred to a third party;
- 18 4. For an order stating that Defendants engaged in unfair business practices;
- 19 5. For damages, disgorgement, and injunctive relief under California's common
20 and statutory law of unfair business practices;
- 21 6. For compensatory and statutory damages, attorneys' fees and costs according to
22 proof at trial;
- 23 7. For treble damages;
- 24 8. For exemplary damages in an amount sufficient to punish and deter Defendants'
25 misconduct;
- 26 9. For rescission of the promissory note;
- 27 10. An accounting of any amounts owed between Plaintiffs and Defendants;
- 28 11. For such other relief as the Court may deem just and proper.

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Tia Smith, am the Plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true. I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 1st day of August, 2011, in Los Angeles, California.



TIA SMITH, Plaintiff

MEMORANDUM OF LAW

THE NOTE AND MORTGAGE (DEED OF TRUST) ARE INSEPARABLE

Kirby v. Williams 230 F2d 330 (US Court of Appeals, 5th cir.) Feb 10, 1956, Rehearing denied Apr. 24, 1956 states: "the note and mortgage are inseparable, the former as essential, the latter as an incident. An assignment carries the mortgage with it, while an assignment of the latter is a nullity."

1 Instant matter: presenting a copy of a note with the excuse of "customary
2 procedure" is inadmissible. See: In United States of America v. Hibernia Nat'l.
3 Bank, 841 F2d 592 96 A.L.R. Fed. 895, 5 UCC Rep. Serv. 2d 1392, U.S. Court of
4 Appeals, 5th cir. Apr. 5, 1988. Rehearing and Rehearing En Banc Denied May 9,
5 1988, the Court stated: "**Hibernia's reliance on commercial custom is**
6 **misplaced, commercial custom does not apply where the UCC provides**
7 **otherwise."** Plaintiff has no evidence that U.S. BANK is a true holder in due
8 course and that they have anything other than just a "copy" of the alleged note in
9 question and the fraudulent assignment, the groundwork of a fraudulent
10 foreclosure. This is inexcusable and shows the intent of U.S. BANK to deceive
11 and misrepresent their true status.

12
13 **Carpenter v. Longan, 83 US 271, 274 21 L.Ed. 313 (1872):** The Note and Deed
14 are inseparable. In this case, the Note and Deed have been separated from the
15 beginning. This act alone determines that the acts of One West Bank have been
16 without authority. See; **Restatement Property, 3rd.**

17 **In Re Leisure Time Sports, Inc. 194 B.R. 859, 861 (9th cir. 1996) stating that:**
18 ***"[a] security interest cannot exist, much less be transferred, independent from***
19 ***the obligation which it secures and that, if the debt is not transferred, neither is***
20 ***the security interest."*** U.S. BANK has not, and cannot ever, evidence to this court
21 that the Note and Deed were kept together or that any valid assignments were ever
22 given in this matter. Since the original beneficial holder made no assignment to
23 U.S. BANK, U.S. BANK takes the assignment as it was given to them, with no
24 power of sale. Further, ***the assignment evidenced by U.S. BANK as their proof of***
25 ***claim is void for illegal and improper filing with the County Records' Office.***
26
27
28

1 **Kelly v. Upshaw, 39 Cal. 2d 179, 192, 246 P2d 23 (1952): "assigning only the**
2 **deed without a transfer of the note is completely ineffective; see also:**
3 **Restatement of Property (3d) (Mortgages) § 5.4 stating: "A mortgage may be**
4 **enforced only by, or in behalf of, a person who is entitled to enforce the**
5 **OBLIGATION that the mortgage secures." (emphasis mine). Again, U.S. BANK**
6 **fails to evidence their substantive right to invoke this courts' jurisdiction, making**
7 **them subject to a lack of standing to even plead before this court.**

8
9 **INJUNCTIVE RELIEF IS PROPER AND JUST**

10 A private party may seek declaratory and injunctive relief against state actions on
11 the basis of Federal preemption where a federal right exists [*Bernhardt v. Los*
12 *Angeles County (9th cir. 2003) 339 F3d 920, 929*]. Plaintiffs are entitled to due
13 process and have been denied that right by virtue of U.S. BANK availing
14 themselves of the Courts' jurisdiction through the statutory scheme of non-judicial
15 foreclosure.

16 **Injunctive Relief:** likelihood of irreparable injury: party must demonstrate
17 irreparable injury is likely in the absence of injunction [*Winter v. Natural*
18 *Resources Defense Council, Inc. (2008) See: Freedom Holdings, Inc. v. Spitzer*
19 *(2nd cir. 2005) 408 F3d 112, 114-irreparable injury is the "single most*
20 **important prerequisite for the issuance of a preliminary injunction."** In this
21 instant matter, Plaintiff would be irreparably harmed by the illegal unlawful
22 detainer proceeding as a direct result of the illegal foreclosure sale proceeding
23 without proper authority in that they would lose possession of their property
24 through the Defendants' abuse of the California statutory scheme of non-judicial
25 foreclosure.

26
27 **"Sufficient serious questions make them a fair ground for litigation plus the**
28 **balance of hardships tipped sharply in plaintiffs favor." [Dept. of Parks and**

1 **Rec. for state of Calif. V. Bazaar Del Mundo, Inc. (9th cir. 2006) 448 F3d**
2 **1118,1123; Cliffs Notes, Inc. v. Bantam Doubleday Dell Pub. Group, Inc. (2nd**
3 **cir. 1989) 886 F2d 490, 497; See also: J. Ginsburg Dissent Opn. In Winter v.**
4 **Natural Resources Defense Council, Inc., supra US at , 129 S.ct. at 392-**
5 ***court may evaluate claims for equitable relief on a "sliding scale", awarding***
6 ***relief based upon a lower likelihood of harm when the likelihood of success is***
7 ***very high..***

8
9 **Evidentiary considerations:** A preliminary injunction is customarily granted on
10 the basis of procedures less formal and evidence less complete than at trial.
11 Therefore, plaintiff need not prove his case at a preliminary injunction
12 hearing...plaintiffs' evidence ***need not meet summary judgment standards.***
13 **(FRCP)**

14
15 ***"Because the note in question was not payable 'to order or to the bearer', the***
16 ***plaintiff payee did not 'hold in due course'.*** [Pascal v. Tardera (1986) 123 A.D.
17 ***2d 752, 507 N.Y.S. 2d 225*]; *"where an instrument is neither payable to order or***
18 ***to bearer, no one can qualify as a holder in due course,"*** [Key Bank of S.E New
19 ***York v. Strober Bros., Inc. (1988) 136 A.D. 2d 604, 523 N.Y.S. 2d 855*].**

20 Plaintiff Deutsche has exhibited no evidence of having the holder in due course
21 status needed to pursue this matter and cannot ever bring said evidence before this
22 court, nor can they ever evidence being or representing the true creditor. This
23 necessary element precludes Deutsche from exercising any power or authority over
24 the subject property.
25
26
27
28

1 "Where administrative action may result in loss of both property and life, or of all
2 that makes life worth living, any doubt as to the extent of power delegated to
3 administrative

4 officials is to be resolved in citizen's favor, and court must be especially sensitive
5 to the citizen's rights where proceeding is non-judicial." United States v. Minker,
6 350 U.S.179(1956).

7
8 **ANY MERS ASSIGNMENT TO ANY NON-MERS MEMBER IS A**
9 **NULLITY AND IS VOID FOR LACK OF AUTHORITY TO ASSIGN ANY**
10 **INTEREST AS THERE IS NONE!** MERS, Inc. could never have given any
11 rights to One West Bank it did not possess at the time of the recorded assignment,
12 which is still void for violations of state and federal laws. MERS, Inc. argued in
13 the above case that: "*it is not authorized to engage in the practices that would*
14 *make it a party to enforcement or transfer of mortgages.*" Non-judicial
15 foreclosure is an obvious enforcement action and attempt to collect a debt by
16 extortionate means within the state of California and, therefore, MERS, Inc. or any
17 of its fatally assigned "beneficiaries" lacks the authority to invoke the statutes or
18 laws within this state.
19

20
21 **Mtg. Electronic Reg. Sys., Inc. v. Nebraska Dep't. of Banking and Finance,**
22 **704 N.W. 2d 784, 786-787 (Neb. 2005) :** MERS, Inc. represented that it "*only*
23 *holds legal title to members' mortgages in a nominee capacity and is*
24 *contractually prohibited from exercising any rights with respect to the mortgages*
25 *(i.e., foreclosures) without the authorization of its members."*
26
27
28

1 **MERS, Inc Assignment does not confer standing or authority: See: In re**
2 **Sheridan, 2009 WL 631355, *4(Bankr. D. Idaho 2009); in re Mitchell, 2009**
3 **WL 1044368, *3-4(Bankr. D. Nev. 2009); in re Jacobson, 402 B.R. 359, 367**
4 **(Bankr. W.D. Wash. 2009). As noted in the *Sheridan Court*, MERS, Inc.**
5 **"collects no money from the debtors under the note(s), nor will it realize the**
6 **value of the property through the foreclosure of the deed of trust in the event**
7 **the note is not paid." 2009 W.L. 631355 at *4. MERS, Inc. and U.S. BANK have**
8 **never had any pecuniary or financial interest in the subject property and lack**
9 **standing to invoke the non-judicial foreclosure statutory scheme within the state of**
10 **California.**

11
12 **Saxon Mortgage Services, Inc. v. Ruthie B. Hillery No. C-08-4357 EMC**
13 **(Docket no. 7) US Dist. Court For Northern Dist. Of Calif.: "*Because MERS***
14 ***has no financial interest in the note, it will suffer no injury if the note is not paid***
15 ***and will realize no benefit if the D.O.T. is foreclosed. Accordingly, MERS, Inc.***
16 ***cannot satisfy the requirements of constitutional standing. GMAC, as MERS'***
17 ***assignee of the D.O.T., "stands in the shoes" of the assignor, taking only those***
18 ***rights and remedies the assignor would have had. [Hunnicut Constr. Inc. v.***
19 ***Stewart Title & Trust of Tucson, Trust No. 3496, 187 Az. 301, 304 (Ct. App.***
20 ***1996) citing Van Waters & Rogers v. Interchange Res., Inc., 114 Az. App. 414,***
21 ***417 (1971); In re Boyajian, 367 B.R. 138, 145 (9th cir. BAP 2007).*** It is well
22 settled law and is therefore a functional impossibility for MERS, Inc. to have
23 assigned any rights to power of sale, substitution of trustee, non-judicial
24 foreclosure, and ultimately, Unlawful Detainer, to Defendant U.S. Bank, or any
25 other person/entity.
26
27
28

1 **Bellistri v. Ocwen, 284 SW 3d, 619 (Missouri Appeal, cert. denied); In re**
2 **Vargas (Cal. B.K.) 396, Bankr. 517; Supreme Court State of Kansas,**
3 **Landmark Nat'l Bank v. Kesler, Mortgage Electronic Registration Systems,**
4 **Inc. (MERS) No. 98, 48: In these and all cases listed above, the courts**
5 **demonstrated that MERS, Inc's capacity is limited and that MERS, Inc. never had**
6 **the authority to execute the assignments. The courts all held the assignments to be**
7 **invalid. Even in the light most favorable to Deutsche Bank in this case, the**
8 **assignments allegedly made and filed by Deutsche are void and invalid on their**
9 **face for false information in the instrument as filed by Deutsche Bank.**

10
11 **ALS CANNOT BENEFIT FROM RECORDING FALSE DOCUMENTS**

12 **Generes v. Justice Court, 106 Cal. App. 3d 678, 165 Cal. Rptr. 222 (3rd Dist.**
13 **1980); People v. Baender, 68 Cal. App. 49, 228 P. 536 (1st Dist. 1924): “**
14 ***knowingly recording spurious documents for the record with intent to defraud.”***
15 **Every person who files a false or forged document with the County Recorder that**
16 **affects title to, or places an encumbrance on, or places an interest secured by a**
17 **mortgage or deed of trust on, real property....with knowledge that the document is**
18 **false or forged is punishable by statute (Cal. Penal Code § 115.5 (a)(b)(c)(d)). The**
19 **word “knowingly” in the statute does not import intent, but merely refers to**
20 **knowledge of the essential facts. In the case of a deed, the crime is complete when**
21 **the deed has been prepared so that upon its' face it will have the effect of**
22 **defrauding one who acts upon it as genuine. Defendants have knowingly filed**
23 **documents within Los Angeles County Recorder's Office that are unquestionably**
24 **false and patently misleading to those relying on them as being true and correct,**
25 **thus damaging Plaintiff by the invalid trustee's deed upon sale that was directed by**
26 **U.S. Bank and clouding Plaintiffs' title. The entire foreclosure proceeding is a**
27 **baseless, invalid monstrosity and is the foundation for Plaintiffs' case.**
28

California Civil Code §3517 No one can take advantage of his own wrong.

WHEN THE NOTE IS SPLIT FROM THE DEED THE LOAN IS
UNSECURED

When the note is split from the deed of trust, "the note becomes, as a practical matter, unsecured." RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 5.4 cmt. a (1997).

A person holding only a note lacks the power to foreclose because it lacks the security, and a person holding only a deed of trust suffers no default because only the holder of the note is entitled to payment on it. See RESTATEMENT (THIRD) OF PROPERTY (MORTGAGES) § 5.4 cmt. e (1997).

"Where the mortgagee has 'transferred' only the mortgage, the transaction is a nullity and his 'assignee,' having received no interest in the underlying debt or obligation, has a worthless piece of paper." 4 RICHARD R. POWELL, POWELL ON REAL PROPERTY, § 37.27[2] (2000).



TIA SMITH, PRO PER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A

Quitclaim Deeds

RECORDING REQUESTED BY:
North American Title Company

AND WHEN RECORDED MAIL TO:

Tia Danielle Smith
4011 Hubert Avenue
Los Angeles CA 90008



THIS SPACE FOR RECORDER'S USE ONLY:

Title Order No.: 157-4019-63

Escrow No.: 100405-DS

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$NONE CITY TRANSFER TAX \$NONE

☒ computed on full value of property conveyed, or "This Conveyance transfers the grantors interest out of his or her revocable living trust, R & T 11930."

☐ computed on full value less value of liens or encumbrances remaining at time of sale.

☐ Unincorporated area ☒ City of Los Angeles AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Tia Smith Trustee of the Tia Smith Trust Dated December 4, 2003

do(es) hereby remise, release and forever quitclaim to:

Tia Danielle Smith, An Unmarried Woman

the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

Lot 23 of Tract No. 11193, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 202, Pages 18 and 19 of Maps, in the Office of the County Recorder of said County.

Also Known as: 4011 Hubert Avenue, Los Angeles, CA 90008

A.P. # 5033-016-023

DATED October 12, 2006

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On

12-2-06

Before me, Rosalind G. Stever Notary Public

A Notary Public in and for said State, personally appeared

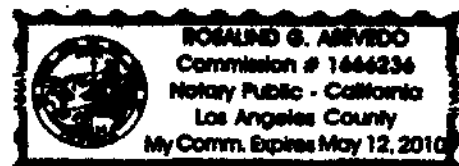
Tia Danielle Smith

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal

Signature

MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE:



(This area for official notarial seal)

RECORDING REQUESTED BY:
North American Title Company

AND WHEN RECORDED MAIL TO:

Tia Danielle Smith
4011 Hubert Avenue
Los Angeles CA 90008

12/11/08

20062737261

THIS SPACE FOR RECORDER'S USE ONLY:

Title Order No.: 157-4019-63

Escrow No.: 180405-DS

QUITCLAIM DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX is \$NONE CITY TRANSFER TAX \$NONE

[X] computed on full value of property conveyed, or "This Conveyance transfers the grantors interest into his or her revocable living trust, R & T 11930."

[] computed on full value less value of liens or encumbrances remaining at time of sale.

[] Unincorporated area [X] City of Los Angeles AND

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Tia Danielle Smith, An Unmarried Woman

"This conveyance transfers
an interest into or out of a
Living Trust, R & T 11930."

do(es) hereby remise, release and forever quitclaim to:

Tia Smith Trustee of the Tia Smith Trust Dated December 4, 2003

the real property in the City of Los Angeles, County of Los Angeles, State of California, described as:

Lot 23 of Tract No. 11193, in the City of Los Angeles, County of Los Angeles, State of California, as per Map recorded in Book 202, Pages 18 and 19 of Maps, in the Office of the County Recorder of said County.

Also Known as: 4011 Hubert Avenue, Los Angeles, CA 90008

A.P. # 5033-016-023

DATED October 12, 2006

STATE OF CALIFORNIA

COUNTY OF Los Angeles

On 12-2-06

Before me, Rosalind G. Beavens, Notary Public

A Notary Public in and for said State, personally appeared

Tia Danielle Smith

Tia Danielle Smith

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

WITNESS my hand and official seal.



Signature

(This area for official notarial seal)

MAIL TAX STATEMENTS TO PARTY SHOWN BELOW; IF NO PARTY SHOWN, MAIL AS DIRECTED ABOVE:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit B

Deed of Trust

State of California

County of Los Angeles

On 12-2-06

, before me Rosalind G. Asencio, notary
Public
personally appeared

Tia Danielle Smith

, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that
by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument

WITNESS my hand and official seal



06 2729010

9

(1) No Hazardous Substance has been located, used, manufactured, generated, treated, handled, stored, spilled, disposed of, discharged or released by any person on, under or about the Property

(2) Trustor has no knowledge of or reason to believe that there is any pending or threatened investigation, assessment, claim, demand, action or proceeding of any kind relating to (i) any alleged or actual Hazardous Substance located under or about the Property or (ii) alleged or actual violation or noncompliance by Trustor or any tenant of Trustor with regard to any Environmental Law involving the Property

(3) Neither Trustor nor any tenant of Trustor is required by any Environmental Law to obtain or maintain any permit, license, financial responsibility certificate or other approval as a condition to its business operations or in connection with its use, development or maintenance of the Property

c Trustor represents and warrants that Trustor and every tenant of Trustor have been, are and will remain in full compliance with any Environmental Law applicable to its business operations and its use, development or maintenance of the Property

d Trustor agrees to permit, or cause any tenant of Trustor to permit, Beneficiary to enter and inspect the Property at any reasonable time for purposes of determining, as Beneficiary deems necessary or desirable, (i) the existence, location and nature of any Hazardous Substance on, under or about the Property, (ii) the existence, location, nature, magnitude and spread of any Hazardous Substance that has been spilled, disposed of, discharged or released on, under or about the Property or (iii) whether or not Trustor and any tenant of Trustor are in compliance with applicable Environmental Law. If Trustor or its tenant fails to comply fully with the terms hereof, Beneficiary may obtain affirmative injunctive relief therefor

e Trustor agrees to indemnify and hold Beneficiary and its successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including, without limitation, all costs of litigation and attorneys' fees, which Beneficiary and its successors and assigns may directly or indirectly sustain or suffer as a consequence of any inaccuracy or breach of any representation, warranty or promise made in this deed of trust in connection with any Hazardous Substance or Environmental Law. Notwithstanding any of the language in the deed of trust to the contrary, this indemnity covers claims asserted after all the indebtedness secured by this deed of trust has been paid and discharged, whether or not the deed of trust has also been reconveyed to Trustor. The only exclusions hereto may relate to claims arising out of the affirmative acts of Beneficiary or of a third party after Trustor's interest in the Property has terminated.

f The provisions of this Paragraph 4 shall not be affected by the acquisition by Beneficiary or its successors or assigns of any ownership or other interest in the Property beyond Beneficiary's security interest in the Property created under this deed of trust, whether or not such acquisition is pursuant to the foreclosure of this deed of trust or a merger of the interest of the Beneficiary or its successors and assigns in the Property

06 27 29010

7

affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the Property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Beneficiary or Trustee hereunder.

h. At least three months or any lesser period required by law having elapsed between the recordation of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, shall sell the Property at the time and place of sale fixed by it in the notice of sale, either as a whole or in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United State of America, payable at the time of sale except as otherwise permitted by law. Trustee may postpone sale of all or any portion of the Property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement, all as permitted by law. Trustee shall deliver to the purchaser its deed conveying the Property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of this sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Beneficiary, the remainder, if any, to be paid to the person or persons legally entitled thereto. If Beneficiary shall elect to bring suit to foreclose this deed of trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Beneficiary shall be entitled to reasonable attorney's fees and litigation costs.

i. Beneficiary, or any successor in ownership of any indebtedness secured hereby, may from time to time, by instrument in writing, substitute a successor or successors to any Trustee named herein or acting hereunder, which instrument, executed by the Beneficiary and duly acknowledged and recorded in the office of the recorder of the county or counties where said property is situated, shall be conclusive proof of proper substitution of such successor Trustee or Trustees, who shall, without conveyance from the Trustee predecessor, succeed to all its title, estate, rights, powers and duties. Said instrument must contain the name of the original Trustor, Trustee and Beneficiary hereunder, the book and page where this deed of trust is recorded and the name and address of the new Trustee.

j. This deed of trust applies to, inures to the benefit of, and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. The term Beneficiary shall mean the owner and holder, including, without limitation, pledgees, of the note, guarantee, Agreement, or other evidence of indebtedness secured hereby, whether or not named as Beneficiary herein. In this deed of trust, whenever the context so requires, the singular number includes the plural.

k. Trustee accepts this Trust when this deed of trust, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other deed of trust or of any action or proceeding in which Trustor, Beneficiary or Trustee shall be a party unless brought by Trustee.

5

f. To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the maximum rate allowed by law in effect at the date hereof or at the option of Beneficiary, such sums may be added to the principal balance of any indebtedness secured hereby and shall bear the highest rate of interest as any such indebtedness.

g. To pay for any statement provided for by the law in effect on the date hereof regarding the obligation secured hereby in the amount demanded by the Beneficiary but not to exceed the maximum allowed by law at the time the statement is demanded.

3. IT IS FURTHER AGREED THAT

a. Any award of damages in connection with any condemnation for public use of or injury to the Property or any part thereof is hereby assigned and shall be paid to Beneficiary who may apply or release such monies received by him in the same manner and with the same effect as above provided for disposition of proceeds of fire or other insurance.

b. By accepting payment of any sum secured hereby after its due date, or after the filing of notice of default and of election to sell, Beneficiary shall not waive its right to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

c. Without affecting the liability of any person, including, without limitation, Trustor, for the payment of any indebtedness secured hereby, or the lien of this deed of trust on the remainder of the Property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows:

(1) Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any of the Property securing the indebtedness.

(2) Trustee may, at any time, and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the Property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this deed of trust or the lien or charge thereof or, (d) reconvey, without any warranty, all or any part of the Property.

d. Upon (a) written request of Beneficiary or (b) performance of all obligations of the Trustor hereunder and under each and every note, guarantee, Agreement or other writing evidencing the indebtedness secured hereby, and upon surrender of this deed of trust to Trustee for cancellation and retention and upon payment of its fees, Trustor shall reconvey, without warranty, the Property then held hereunder. The recital in such reconveyance of any matters of fact shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described

06 2729010

3

Parcel ID Number 5033-016-023

together with all improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Beneficiary to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this deed of trust, and all of the foregoing, together with said property (or the leasehold estate if this deed of trust is on a leasehold) are herein referred to as the "Property." Borrower understands and agrees that MERS holds only legal title to the interests granted by Borrower in this Deed of Trust; but, if necessary to comply with law or custom, MERS, (as nominee for Lender and Lender's successors and assigns), has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property, and to take any action required of Lender including, but not limited to, releasing or canceling this Deed of Trust.

1. THIS DEED OF TRUST SECURES

a. All of the obligations of Trustor in favor of Beneficiary or order under the terms of a revolving credit agreement dated NOVEMBER 13, 2006, herein called Agreement. The Agreement provides, among other things, for the payment of all sums advanced by Beneficiary from time to time pursuant to the Agreement and for the payment of interest. The maximum principal obligation under the Agreement to be secured by this deed of trust at any one time is SIXTY NINE THOUSAND FIVE HUNDRED AND 00/100 Dollars (\$ 69,500.00) unless Beneficiary, with Trustor's written consent, hereafter increases this amount. Advances made by Beneficiary to protect the security of this deed of trust or to preserve the Property shall not be subject to the limitation of the preceding sentence.

The security of this deed of trust shall not be affected by the extension, renewal or modification from time to time of the obligations, instruments or agreements described above.

b. Payment of any and all obligations and liabilities, whatsoever, whether primary, secondary, direct, indirect, fixed or contingent, whether now or hereafter due from Trustor (or any successor in interest to Trustor) whether created directly or acquired by assignment if the documents evidencing such obligation or liability or any other writing signed by Trustor (or any successor in interest to Trustor) specifically provides that said obligation or liability is secured by this deed of trust.

c. Performance of each agreement of Trustor herein contained or contained in any other agreement, instrument or other writing to which Trustor is a party if the same is written in connection with any of the foregoing.

06 2729010

13

RIDER TO NOTE AND SECURITY INSTRUMENT

LOAN NO. [REDACTED] 9130

THIS RIDER is made this 13TH day of NOVEMBER, 2006 and is incorporated into and shall be deemed to amend and supplement both the Note and Mortgage, Deed of Trust or Security Deed (the "Security Instrument") of the same date given by the undersigned (the "Borrower") to secure Borrower's Note (the "Note") to AMERICAN MORTGAGE NETWORK, INC., A DELAWARE CORPORATION (the "Lender") of the same date and covering the property described in the Security Instrument and located at:
4011 HUBERT AVENUE, LOS ANGELES, CALIFORNIA 90008-2621

[Property Address]

PREPAYMENT PENALTY - FIRST 12 MONTHS OF NOTE

You have the right to make payments of Principal at any time before they are due. A payment of Principal only is known as a "Prepayment". When you make a Prepayment, you must tell the Note Holder in writing that you are doing so.

Subject to the Prepayment Penalty specified below, you may make a full Prepayment or partial Prepayment of your obligation. The Note Holder will use all of your Prepayments to reduce the amount of principal that you owe under this Note. If you make a partial Prepayment, there will be no changes in the due date(s) or in the amount of your monthly payment unless the Note Holder agrees in writing to those changes.

If within the 12 month period beginning with the date of the Note, (the "Penalty Period"), you make a full or partial Prepayment, you will pay a prepayment charge as consideration for the Note Holder's acceptance of such payment. No prepayment charge will be assessed for any prepayment made after the Penalty Period.

You may prepay an amount not exceeding twenty percent (20%) of the original principal amount in any twelve month period commencing from the date of the Note or anniversary dates thereof without penalty. However, during the Penalty Period, if the aggregate amount of the principal prepaid in any twelve month period exceeds twenty percent (20%) of the original principal amount of this loan, then as consideration of the acceptance of such Prepayment and in addition to any other sum payable hereunder, you agree to pay the Note Holder hereof a sum equal to six (6) months interest on the amount prepaid in excess of twenty percent (20%) of the original principal amount at the rate specified in the Note.

Such additional sums shall be paid whether prepayment is voluntary or involuntary including any prepayment affected by the exercise of any acceleration provisions contained in the Note to which this Rider is attached, or in the Security Instrument securing the Note to which this Rider is attached.

06 2729009

1/18/05

Page 1 of 2

ACST1551

1555T

BICA

LOAN NO. [REDACTED] 130

21

(H) Payment Options

After the first Interest Rate Change Date, Lender may provide me with up to three (3) additional payment options that are greater than the Minimum Payment, which are called "Payment Options". I may be given the following Payment Options:

- (i) **Interest Only Payment:** the amount that would pay the interest portion of the monthly payment at the current interest rate. The Principal balance will not be decreased by this Payment Option and it is only available if the interest portion exceeds the Minimum Payment.
- (ii) **Fully Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) at the Maturity Date in substantially equal payments
- (iii) **15 Year Amortized Payment:** the amount necessary to pay the loan off (Principal and Interest) within a fifteen (15) year term from the first payment due date in substantially equal payments. This monthly payment amount is calculated on the assumption that the current rate will remain in effect for the remaining term

These Payment Options are only applicable if they are greater than the Minimum Payment

B. TRANSFER OF THE PROPERTY OR A BENEFICIAL INTEREST IN BORROWER

Section 18 of the Security Instrument entitled "Transfer of the Property or a Beneficial Interest in Borrower" is amended to read as follows:

Transfer of the Property or a Beneficial Interest in Borrower. As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law. Lender also shall not exercise this option if (a) Borrower causes to be submitted to Lender information required by Lender to evaluate the intended transferee as if a new loan were being made to the transferee; and (b) Lender reasonably determines that Lender's security will not be impaired by the loan assumption and that the risk of a breach of any covenant or agreement in this Security Instrument is acceptable to Lender.

To the extent permitted by Applicable Law, Lender may charge a reasonable fee as a condition to Lender's consent to the loan assumption. Lender may also require the transferee to sign an assumption agreement that is acceptable to Lender and that obligates the transferee to keep all the promises and agreements made in the Note and in this Security Instrument. Borrower will continue to be obligated under the Note and this Security Instrument unless Lender releases Borrower in writing.

PayOption MTA ARM Rider
FE-5315 (0511)

Page 4 of 5

06 2729009

LOAN NO. [REDACTED] 130

19

(C) Index

Beginning with the first Interest Rate Change Date, my adjustable interest rate will be based on an index. The "index" is the "Twelve-Month Average" of the annual yields on actively traded United States Treasury Securities adjusted to a constant maturity of one year as published by the Federal Reserve Board in the Federal Reserve Statistical Release entitled "Selected Interest Rates (H.15)" (the "Monthly Yields"). The Twelve Month Average is determined by adding together the Monthly Yields for the most recently available twelve months and dividing by 12. The most recent index figure available as of the date 15 days before each Interest Rate Change Date is called the "Current Index".

If the index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

(D) Calculation of Interest Rate Changes

Before each Interest Rate Change Date, the Note Holder will calculate my new interest rate by adding THREE AND 400/1000 percentage point(s) 3.400 % ("Margin") to the Current Index. The Note Holder will then round the result of this addition to the nearest one-eighth of one percentage point (0.125%). This rounded amount will be my new interest rate until the next Interest Rate Change Date. My interest will never be greater than 9.950 %. Beginning with the first Interest Rate Change Date, my interest rate will never be lower than the Margin.

3. PAYMENTS

(A) Time and Place of Payments

I will make a payment every month

I will make my monthly payments on the 1ST day of each month beginning on

JANUARY 01, 2007. I will make these payments every month until I have paid all the Principal and interest and any other charges described below that I may owe under this Note. Each monthly payment will be applied as of its scheduled due date and will be applied to interest before Principal. If, on DECEMBER 01, 2036, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at P. O. BOX 85302

ATTN: CASHIER'S DEPT., SAN DIEGO, CA 92186

or at a different place if required by the Note Holder

(B) Amount of My Initial Monthly Payments

Each of my initial monthly payments until the first Payment Change Date will be in the amount of U.S. \$ 1,918.87 unless adjusted under Section 3 (F).

(C) Payment Change Dates

My monthly payment may change as required by Section 3(D) below beginning on the 1ST day of JANUARY, 2008, and on that day every 12th month thereafter. Each of these dates is called a "Payment Change Date." My monthly payment also will change at any time Section 3(F) or 3(G) below requires me to pay a different monthly payment. The "Minimum Payment" is the minimum amount Note Holder will accept for my monthly payment which is determined at the last Payment Change Date or as provided in Section 3(F) or 3(G) below. If the Minimum Payment is not sufficient to cover the amount of the interest due then negative amortization will occur.

PayOption MTA ARM Rider
FE-5315 (0511)

Page 2 of 5

06 2729009

17

EXHIBIT "A"
(LEGAL DESCRIPTION)

LOT 23 OF TRACT 11193, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 202, PAGES 18 AND 19 OF MAPS, RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID LOS ANGELES COUNTY.

06 2729009

17

EXHIBIT "A"
(LEGAL DESCRIPTION)

LOT 23 OF TRACT 11193, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 202, PAGES 18 AND 19 OF MAPS, RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID LOS ANGELES COUNTY.

06 2729009

13

requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.

Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

06 2729009

to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

06 2729003

9

attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserve shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.

Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

06 2729009

7

lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan

5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either (a) a one-time charge for flood zone determination, certification and tracking services, or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee and Borrower further agrees to generally assign rights to insurance proceeds to the holder of the Note up to the amount of the outstanding loan balance.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with

06 2729009

5

of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS Borrower and Lender covenant and agree as follows.

1. **Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow Items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash, (b) money order, (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity, or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Application of Payments or Proceeds.** Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.

3. **Funds for Escrow Items.** Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be

06 2729009

3

Lender's address is P. O. BOX 85463, SAN DIEGO, CA 92186

(D) "Trustee" is FIRST AMERICAN TITLE INSURANCE COMPANY

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P O Box 2026, Flint, MI 48501-2026, tel (888) 679-MERS

(F) "Note" means the promissory note signed by Borrower and dated NOVEMBER 13, 2006

The Note states that Borrower owes Lender FIVE HUNDRED FIFTY SIX THOUSAND AND 00/100

Dollars

(U S \$ 556,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than DECEMBER 01, 2036

(G) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(H) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest

(I) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower (check box as applicable):

<input checked="" type="checkbox"/> Adjustable Rate Rider	<input type="checkbox"/> Condominium Rider	<input type="checkbox"/> Second Home Rider
<input type="checkbox"/> Balloon Rider	<input type="checkbox"/> Planned Unit Development Rider	<input type="checkbox"/> 1-4 Family Rider
<input type="checkbox"/> VA Rider	<input type="checkbox"/> Biweekly Payment Rider	<input checked="" type="checkbox"/> Other(s) (specify)

PREPAYMENT PENALTY RIDER

(J) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions

(K) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization

(L) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(M) "Escrow Items" means those items that are described in Section 3

(N) "Miscellaneous Proceeds" means any compensation, settlement, award or damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property, (ii) condemnation or other taking of all or any part of the Property, (iii) conveyance in lieu of condemnation, or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property

(O) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan

(P) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument,

00 67 39102

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit C

Notice of Default

733396

Recording Requested By
When Recorded Mail To

Cal-Western Reconveyance Corp.
P.O. Box 22004
525 East Main Street
El Cajon CA 92022-9004

1241071-14 *XXXXX*
Trustee Sale No. 1241071-14

090663570

Space Above This Line For Recorder's Use

Loan No. XXXXXX6453 Ref: SMITH, TIA DANIELLE

THIS IS TO CERTIFY THAT THIS IS A FULL,
TRUE AND CORRECT COPY OF THE ORIGINAL
RECORDED IN THE OFFICE OF THE COUNTY

RECORDING FEE: \$15.00

RECORDED ON: September 24, 2009

AS DOCUMENT NO: 09-1452803

BY: s/ Luis Henriquez

LSI TITLE COMPANY (CA)

NOTICE OF DEFAULT

IMPORTANT NOTICE

IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS, IT MAY BE SOLD WITHOUT ANY COURT ACTION, and you may have legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice). This amount is \$25,509.83 as of September 23, 2009, and will increase until your account becomes current. While your property is in foreclosure, you still must pay other obligations (such as insurance and taxes) required by your note and deed of trust or mortgage. If you fail to make future payments on the loan, pay taxes on the property, provide insurance on the property, or pay other obligations as required in the note and deed of trust or mortgage, the beneficiary or mortgagee may insist that you do so in order to reinstate your account in good standing. In addition, the beneficiary or mortgagee may require as a condition to reinstatement that you provide reliable written evidence that you paid all senior liens, property taxes, and hazard insurance premiums.

Upon your written request, the beneficiary or mortgagee will give you a written itemization of the entire amount you must pay. You may not have to pay the entire unpaid portion of your account, even though full payment was demanded, but you must pay all amounts in default at the time payment is made. However, you and your beneficiary or mortgagee may mutually agree in writing prior to the time the notice of sale is posted (which may not be earlier than the end of the three-month period stated above) to, among other things, (1) provide additional time in which to cure the default by transfer of the property or otherwise; or (2) establish a schedule of payments in order to cure your default; or both (1) and (2).

Following the expiration of the time period referred to in the first paragraph of this notice, unless the obligation being foreclosed upon or a separate written agreement between you and your creditor permits a longer period, you have only the legal right to stop the sale of your property by paying the entire amount demanded by your creditor.

To find out the amount you must pay, or to arrange for payment to stop the foreclosure, or if your property is in foreclosure for any other reason, contact:

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC

C/O CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON 9004 CA 92022-9004
(619)590-9200

If you have any questions, you should contact a lawyer or the governmental agency which may have insured your loan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit D

Notice of Trustee's Sale

RECORDING REQUESTED BY
And When Recorded Mail To:

CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON CA 92022-9004



1241071-14 *nosxr*

Trustee Sale No. 1241071-14

Space Above This Line For Recorder's Use



5570

NOTICE OF TRUSTEE'S SALE

LOAN NO: XXXXXX6453
REF. SMITH, TIA DANIELLE

APN: 5033-016-023 TRA 000067
UNINS

IMPORTANT NOTICE TO PROPERTY OWNER:

YOU ARE IN DEFAULT UNDER A DEED OF TRUST, DATED November 13, 2006. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER

On January 19, 2010, at 10:00am, CAL-WESTERN RECONVEYANCE CORPORATION, as duly appointed trustee under and pursuant to Deed of Trust recorded December 08, 2006, as Inst. No. 20062729009, in book XX, page XX, of Official Records in the office of the County Recorder of LOS ANGELES County, State of CALIFORNIA executed by:

TIA DANIELLE SMITH, AN UNMARRIED WOMAN

WILL SELL AT PUBLIC AUCTION TO HIGHEST BIDDER FOR CASH, CASHIER'S CHECK DRAWN ON A STATE OR NATIONAL BANK, A CHECK DRAWN BY A STATE OR FEDERAL CREDIT UNION, OR A CHECK DRAWN BY A STATE OR FEDERAL SAVINGS AND LOAN ASSOCIATION, SAVINGS ASSOCIATION, OR SAVINGS BANK SPECIFIED IN SECTION 5102 OF THE FINANCIAL CODE AND AUTHORIZED TO DO BUSINESS IN THIS STATE:

**AT THE WEST SIDE OF THE LOS ANGELES COUNTY COURTHOUSE,
SOUTHEAST DISTRICT, 12720 NORWALK BLVD.,
NORWALK CALIFORNIA**

all right, title and interest conveyed to and now held by it under said Deed of Trust in the property situated in said County and State described as:

COMPLETELY DESCRIBED IN SAID DEED OF TRUST

3

NOTICE OF TRUSTEE'S SALE

Trustee Sales No. 1241071-14

The street address and other common designation, if any, of the real property described above is purported to be:

**4011 HUBERT AVENUE
LOS ANGELES CA 90008**

The undersigned Trustee disclaims any liability for any incorrectness of the street address and other common designation, if any, shown herein.

Said sale will be held, but without covenant or warranty, express or implied, regarding title, possession, condition, or encumbrances, including fees, charges and expenses of the Trustee and of the trusts created by said Deed of Trust, to pay the remaining principal sums of the note(s) secured by said Deed of Trust. The total amount of the unpaid balance of the obligation secured by the property to be sold and reasonable estimated costs, expenses and advances at the time of the initial publication of the Notice of Sale is: **\$630,063.73.**

If the Trustee is unable to convey title for any reason, the successful bidder's sole and exclusive remedy shall be the return of monies paid to the Trustee, and the successful bidder shall have no further recourse.

The beneficiary under said Deed of Trust heretofore executed and delivered to the undersigned a written Declaration of Default and Demand for Sale, and a written Notice of Default and Election to Sell. The undersigned caused said Notice of Default and Election to Sell to be recorded in the county where the real property is located.

Regarding the property that is the subject of this notice of sale, the "mortgage loan servicer" as defined in Civil Code § 2923.53(k)(3), declares that it has obtained from the Commissioner a final or temporary order of exemption pursuant to Civil Code section 2923.53 and that the exemption is current and valid on the date this notice of sale is recorded. The time frame for giving a notice of sale specified in Civil Code Section 2923.52 subdivision (a) does not apply to this notice of sale pursuant to Civil Code Sections 2923.52.

**FOR SALES INFORMATION: Mon - Fri 9:00am to 4:00pm (619)590-1221
CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON CA 92022-9004**

Dated: December 29, 2009

CAL-WESTERN RECONVEYANCE CORPORATION

By:

Pete Vella
Authorized Signature

Pete Vella /kv.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit E

Corporate Assignment Of Deed

Of Trust

A circular stamp with the text "SLAI 1994" in the center. The stamp is surrounded by a decorative border of small dots.

18

CORPORATE ASSIGNMENT OF DEED OF TRUST Page 2 of 2

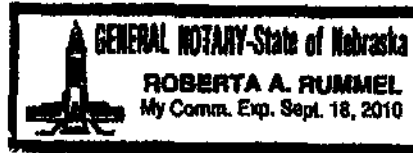
STATE OF Nebraska
COUNTY OF Scotts Bluff

On October 1st, 2009 before me, ROBERTA A. RUMMEL, Notary Public, personally appeared THEODORE SCHULTZ, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Nebraska that the foregoing paragraph is true and correct.

WITNESS my hand and official seal,

Roberta A. Rummel
ROBERTA A. RUMMEL
Notary Expires: 09/18/2010



(This area for notarial seal)

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

Exhibit F

SUBSTITUTION OF TRUSTEE

RECORDING REQUESTED BY:

AND WHEN RECORDED MAIL TO:



CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET
P.O. BOX 22004
EL CAJON CA 92022-9004



SPACE ABOVE THIS LINE FOR RECORDER'S USE

LOAN NO.: XXXXXX6453 T.S. NO.: 1241071-14
MERS PHONE: 1-888-679-6377 MIN NO: 1001310 2060989130 2

090005570

SUBSTITUTION OF TRUSTEE

This Form Provided By Cal-Western Reconveyance Corporation

WHEREAS, TIA DANIELLE SMITH, AN UNMARRIED WOMAN was the original Trustor,

FIRST AMERICAN TITLE INSURANCE COMPANY
was the original Trustee,

and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR
AMERICAN MORTGAGE NETWORK, INC., A DELAWARE CORPORATION was the original
Beneficiary

under that certain Deed of Trust dated November 13, 2006 and recorded on December 08, 2006 as
Instrument No. 20062729009, in book XX, page XX of Official Records of LOS ANGELES County,
California, and

WHEREAS, the undersigned is the present Beneficiary under said Deed of Trust, and WHEREAS,
the undersigned desires to substitute a new Trustee under said Deed of Trust in the place and stead of
present Trustee thereunder, in the manner in said Deed of Trust provided.

NOW, THEREFORE, the undersigned hereby substitutes

CAL-WESTERN RECONVEYANCE CORPORATION
525 EAST MAIN STREET, P.O. BOX 22004
EL CAJON CA 92022-9004

as Trustee under said Deed of Trust.

SUBSTITUTION OF TRUSTEE

LOAN NO:

6453

TS NO:

1241071-14

Whenever the context hereof so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

Dated:

SEP 15 2009

Mortgage Electronic Registration Systems, Inc. (MERS)

Jennifer Vicia
Assistant Secretary of MERS

STATE OF: California
COUNTY OF: San Diego

On 11/3/09 before me, J Archuleta, a Notary Public, personally appeared Jennifer Vicia, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

